

STATE OF VERMONT
WASHINGTON COUNTY

FILED

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JOHN CASEY,)	
Plaintiff)	Washington Superior Court
)	Docket No. 632-1005
v.)	SUPERIOR COURT
)	WASHINGTON COUNTY
ROBERT HOFMANN, et al.,)	
Defendants)	

DECISION ON CROSS MOTIONS FOR SUMMARY JUDGMENT

John Casey is an inmate in the custody of the Vermont Commissioner of Corrections under sentence. He is seeking review of governmental action under Rule 75 for two actions of the Department of Corrections: determination that he committed a major B #4 disciplinary rule violation (DR) for attempted assault or fighting, and removal of him from the Workforce Development Program as a result of the violation.

The case is before the court on cross-motions for summary judgment filed pursuant to V.R.C.P. 56. Plaintiff John Casey is represented by Dawn Siebert of the Prisoner’s Rights Office. Defendant Robert Hofmann is represented by Assistant Attorney General Matthew Viens.

Summary Judgment is appropriate “if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, referred to in the statements required by Rule 56(c)(2), show that there is no genuine issue as to any material fact and that any party is entitled to judgment as a matter of law.” V.R.C.P 56(c)(3).

The material facts are undisputed. In August of 2005, Plaintiff was charged with a Major B #4 disciplinary rule violation (DR) for attempted assault or fighting based on an incident involving another inmate.¹

At a hearing on August 25, 2005, Plaintiff was convicted of the Major B #4 disciplinary rule violation. Subsequent to the conviction, Plaintiff pursued an administrative appeal. On or about August 31, 2005, Plaintiff was removed from the Workforce Development Program (WDP) as a result of the incident and/or violation.

¹ A Major B #4 violation consists of “[a]ssault, sexual assault, or fighting where serious bodily injury was not attempted or carried out.” In addition, “[f]or all violations, both major and minor, the attempt or formulation of a plan, or aiding or soliciting another or others to commit a violation is a violation and carries the same sanction as if the violation had been committed.” Standardized Vermont Department of Corrections Rule and Guidelines Recommended Sanctions.

Plaintiff originally asserted three claims in this action: that there was insufficient evidence to support the DR violation; that DOC had not responded as required to his appeal; and that DOC had not responded to a grievance he filed based on his removal from the WDP program. On summary judgment, Plaintiff asks the court to overturn his DR conviction on the grounds that DOC did not comply with the proper evidentiary standard at his DR hearing, and to reinstate him in the WDP program and reinstate lost program participation credits.

Sufficiency of evidence for DR violation

Prison authorities are required to prove inmate disciplinary violations by a “preponderance of the evidence.” LaFaso v. Patrissi, 161 Vt. 46, 50 (1993). When reviewing a finding that a prisoner committed a disciplinary violation, the court must uphold the determination of the prison hearing officer if it is supported by “some evidence.” *Id.*, at 49. The Vermont Supreme Court has said that the relevant question on review is whether there is some evidence in the record that could support the conclusion reached by the disciplinary board. Herring v. Gorczyk, 173 Vt. 240, 243 (2001).

Here, Plaintiff argues that the DOC relied upon conflicting reports from the same person of the incident and that there was no evidence either inmate actually struck the other. This, Plaintiff says, means that there was insufficient evidence to convict him of the violation. In addition, Plaintiff argues that there was insufficient evidence that any attempt to fight was actually made, as there was no indication of the intent required for such a finding.

The evidence includes reports made by different officers who observed different portions of the incident, or recounted contemporaneous statements made to them by other specified persons who were present. There is evidence that Plaintiff was observed motioning another inmate into his cell, “moving around in what appeared to be a fighting stance” with the other inmate, and shutting prison officers out of the cell where the altercation took place. There is evidence that the other inmate and “Inmate Casey appeared to be in a highly adrenalized state as evidenced by their flaring nostrils and hard stares,” that they were less than a foot apart, and that Inmate Casey “lift[ed] a nostril” and gave a sneer at the other inmate and leaned his head at him. This is sufficient to meet the standard that there is “some evidence” to support the DR violation for attempted assault or fighting. No evidence of actual physical contact is necessary for a finding of guilt of a violation for an “attempt.” See footnote #1, above. There was sufficient evidence to support a finding of a DR violation by a preponderance of the evidence. Therefore, there are no grounds to remand the matter to the Department for further action with respect to the DR violation.

Abuse of Discretion for Failure to Reinstate Plaintiff in WDP Program.

Plaintiff alleges that the other inmate also received a DR violation and was removed from the WDP, but later his DR was overturned and he was reinstated into the WDP. Plaintiff claims that the DOC abused its discretion in not doing the same for him, as there is no basis for distinguishing between the two inmates.

Plaintiff has shown no specific facts that demonstrate that the two inmates' cases are indistinguishable, and there are several possible factual scenarios that could support a difference in the outcomes for the two inmates. Thus, Plaintiff has failed to meet any burden of proof with facts. Moreover, the Department has very broad discretion on issues of inmate programming. Plaintiff has not shown grounds for abuse of discretion on the part of the Department.

Order

For the reasons stated above,

Plaintiff Casey's motion for summary judgment is hereby *denied*; and Defendant Hofmann's motion for summary judgment is hereby *granted*.

Dated at Montpelier, Vermont, this 30th day of November, 2006.

Mary Miles Teachout
Mary Miles Teachout
Presiding Judge

cc: Dawn Seibert, Esq.
Mathew Viers, Esq.