

VT SUPERIOR COURT  
WASHINGTON UNIT  
STATE OF VERMONT

SUPERIOR COURT  
Washington Unit

CIVIL DIVISION  
Docket No. 746-11-15 Wncv

2016 DEC 22 A 8:42

BRENT JENKINS  
Plaintiff

v.

LISA MENARD, Commissioner,  
Vermont Department of Corrections  
Defendant

FILED

**DECISION**  
**Cross-Motions for Summary Judgment**

Plaintiff Brent Jenkins is an inmate in the custody of the Vermont Department of Corrections, currently housed in a facility in Michigan. He seeks Rule 75 review of a disciplinary conviction after he allegedly destroyed prison property, a telephone. He claims, based on the written record only, that the conviction should be expunged because the hearing officer failed to make adequate *written* factual findings, citing *Wolff v. MacDonald*, 418 U.S. 539, 565 (1974). The parties have filed cross-motions for summary judgment on this issue.<sup>1</sup>

The State asserts that *Wolff v. MacDonald* does not apply in this case but argues that, even if it does, the findings are adequate. It submitted a recording of the disciplinary hearing to supplement the written record as the hearing officer rendered a decision orally at the end of the hearing. As nearly all courts that have addressed the issue have ruled, oral findings are the functional equivalent of written findings so long as they are preserved in a manner that will permit effective review. See, e.g., *United States v. Copeland*, 20 F.3d 412, 414 (11th Cir. 1994); 9B Fed. Proc., L. Ed. § 22:2096.

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<sup>1</sup> Mr. Jenkin's summary judgment motion does not comply with Rule 56. He submitted a memorandum, a highly abbreviated statement of facts, and a "printed case," the record for Rule 75 purposes. He cited *Garbitelli v. Town of Brookfield*, 2011 VT 122, ¶ 9, 191 Vt. 76, as authority for essentially omitting the statement of facts contemplated by Rule 56. See Notice of Printed Case of Record Evidence (filed May 23, 2016) ("This printed case is filed in lieu of a separate statement of uncontested facts because the record below is sufficient for this Court to determine whether sufficient evidence supports the disciplinary conviction."). The portion of *Garbitelli* then cited addresses the proper sources of facts for Rule 75 review. It does not address Rule 56(c), which controls how facts are presented to the court on summary judgment. Rule 75(b) plainly states, "Proceedings under this rule shall, except as otherwise provided by statute, be governed by the Rules of Civil Procedure as modified by this rule." No statute or anything in Rule 75 modifies the requirements of Rule 56(c), which keeps the factual presentation cogent and ensures that the court will not have to spend time hunting through the record for evidence, unaided by the parties. V.R.C.P. 56(c). Nevertheless, the DOC has not objected and there is no apparent prejudice. *State v. Great Northeast Productions, Inc.*, 2008 VT 13, ¶ 6, 183 Vt. 579 ("Unfortunately, trial courts are often in the position of adjudicating summary-judgment motions on the basis of nonconforming documents. This Court will not disturb a trial court's reliance on a nonconforming summary-judgment motion absent an objection or absent prejudice." (citations omitted)). Because the facts are simple and clear, the court is able to rule on the record as presented.

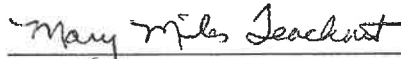
The facts are straightforward. The DOC accused Mr. Jenkins of severely damaging a prison phone in front of a corrections officer. The evidence at the hearing included a statement from that officer describing what happened and a photograph of the damaged phone. In response to this, at the hearing, Mr. Jenkins objected that there was no video evidence or other statements from eyewitnesses. He did not present any competing evidence, however. The hearing officer ruled orally at the end of the hearing.

The court has listened carefully to the recording of the entire hearing including the ruling at the end. There is no reasonable way to understand the hearing officer other than to have found that Mr. Jenkins committed the disciplinary violation as described in the eyewitness statement and as depicted in the photographic evidence. This was a very simple set of evidence and the only evidence considered all pointed to Mr. Jenkins' guilt. In these circumstances, the court concludes that the hearing officer's oral findings were adequate.

#### ORDER

For the foregoing reasons, Mr. Jenkins' motion for summary judgment is denied and the State's motion is granted.

Dated at Montpelier, Vermont this 21st day of December 2016.

  
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Mary Miles Teachout  
Superior Judge