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United States District Court, S.D. New York.

Thomas J. HIGGINS, Plaintiff,
v.
Philip COOMBE, Acting Commissioner of the New York Department of Correctional Services, et al., Defendants.

No. 95 Civ. 8696(RCC). | March 6, 2002.

Opinion

Memorandum & Order

CASEY, J.

***1** Plaintiff, *pro se* prisoner Thomas Higgins, brings this suit claiming Defendants violated his rights under 42 U.S.C. § 1983. Then–District Judge Sonia Sotomayer dismissed the majority of Plaintiff's eight claims by order dated June 13, 1997. Here, Plaintiff claims that Defendants Blaetz and Selsky were biased and retaliatory when Blaetz, a Correctional Services hearing officer, found him guilty at a disciplinary hearing and Selsky affirmed that determination. Defendants Blaetz and Selsky now move the Court for an order, pursuant to Federal Rule of Civil Procedure 56, granting them summary judgment and dismissing Plaintiff's claims against them. For the reasons explained below, Defendants' motion is granted.

I. Background

On November 17, 1994 corrections officers searched Plaintiff's cell at Green Haven Correctional Facility and found several contraband items, including a razor blade. Hearing Transcript I at 4, March 15, 2001 Rubin Aff. at Ex. 1 (hereinafter "Hrg. Tr. I"). Plaintiff was charged, in two separate misbehavior reports, with violating rules prohibiting the exchange of personal property and the possession of weapons, altered items and contraband. *Id.* Defendant Blaetz presided over Plaintiff's Tier III disciplinary hearing at the Superintendent's request.[1] *Id.* at 1. She began by explaining the hearing process, reading the pending charges and accepting Plaintiff's plea of not guilty. *Id.* at 1–5. Plaintiff thereafter attempted to provide explanations for the contraband items. *Id.* at 5.

Plaintiff wanted four inmates to testify to substantiate his belief that his property had been destroyed and that he was the only prisoner required to leave his cell and face the wall during the search. *Id.* at 7.[2] Plaintiff also requested the testimony of the officers involved in the search. He could not name or describe one of the officers, but Blaetz helped him identify the officer in question. As not all of the officers were available, Blaetz adjourned the hearing for five days to accommodate the officers' schedules. *Id.* at 9. Five officers testified about finding the razor blade taped near the head of Plaintiff's bed, completing the search report and depositing the contraband in the designated area. Throughout the hearing, Blaetz permitted Plaintiff to ask almost all of the questions he requested.[3]

At the completion of the officers' testimony, Blaetz asked Plaintiff if there were any other witnesses he planned to call. He again requested that the four inmates be permitted to testify regarding the items found in his cell. Hearing Transcript II at 14, March 15, 2001 Rubin Aff. at Ex. 2. Additionally, Plaintiff asked that Blaetz view the cell for herself. *Id.* Blaetz explained that she found it unnecessary to view his cell as the officers' testimony was sufficient on the location of the razor blade. *Id.* at 19. Further, she denied his request for four inmate witnesses as the current condition of the items found in his cell was not relevant to the hearing. *Id.* at 20.

***2** Blaetz found Plaintiff guilty on the charges of possessing a weapon and contraband and of exchanging property with another inmate without authorization. *Id.* at 26. She found him not guilty of possessing altered goods. *Id.* In light of the seriousness of his violation and to deter other prisoners, Blaetz sentenced Plaintiff to 60 days of "keep lock" with credit for the time he had already been confined during the hearing.[4] On February 6, 1995, Defendant Selsky, the Director of the Special Housing Inmate Disciplinary Program, affirmed Blaetz's determination. *See* March 15, 2001 Rubin Aff. at Ex. 4.

Defendants served their moving papers on Plaintiff on March 15, 2001. Plaintiff did not respond. Aware of its obligation to treat *pro se* litigants with some leniency, the Court waited for Plaintiff's response for several months. As none has been offered, it decides the motion on the basis of the pleadings, Defendants' moving papers, the hearing transcript and Plaintiff's deposition.

II. Discussion

Summary judgment is appropriate "if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a mater of law."

Fed.R.Civ.P. 56(c). In reaching this determination, the court must determine whether there are any material factual issues to be tried while resolving any ambiguities and drawing reasonable inferences in favor of the non-moving party. *Anderson v. Liberty Lobby, Inc.,* 477 U.S. 242, 248–49 (1986).

The Supreme Court has held that in a prison disciplinary hearing, an inmate must be afforded certain procedural safeguards, including advance written notice of the charges against him, a written statement supporting the disposition, reasons for the disciplinary action taken and the opportunity, where appropriate, to call witnesses and present documentary evidence. *Wolff v. McDonnell,* 418 U.S. 539, 563–64 (1974). Finally, the hearing disposition must be supported by at least "some evidence." *Superintendent v. Hill,* 472 U.S. 445, 455 (1985).

After reviewing the transcript of the hearing, it is clear that Plaintiff received all of these protections. There is no indication whatsoever that Defendant Baetz was biased against him. *Kalwasinki v. Morse,* 201 F.3d 103, 109 (2d Cir.1999) (noting inmate is entitled to impartial hearing officer). In fact, she went out of her way to identify and locate a corrections officer that Plaintiff wanted to have testify. Hrg. Tr. I at 1–3. Further, the only witnesses Baetz did not permit were those whose proffered testimony would be irrelevant to the determination of Plaintiff's guilt. "[A] hearing officer does not violate due process by excluding irrelevant or unnecessary testimony." *Kalwasinki v. Morse,* 201 F.3d at 109 (citing *Kingsley v. Bureau of Prisons,* 937 F.2d 26, 30 (2d Cir.1991)). Plaintiff's disagreement with the hearing's result is not a basis for a due process violation.

***3** With respect to Plaintiff's claims against Defendant Selsky, there is simply no demonstration that his approval of Defendant Baetz's finding was retaliatory in nature. Thus, the Court finds no evidence from which a jury could find that Plaintiff was denied his due process rights by Defendants Baetz and/or Selsky. Accordingly, summary judgment is granted in their favor.

The parties are ordered to inform the Court of the status of the remaining claims within 30 days of entry of this order.

So ordered.

Footnotes

1 Department of Correctional Services regulations outline three levels of disciplinary hearings. Tier III is the most severe and can result in loss of privileges, confinement and imposition of work assignments. 7 N.Y.C.R.R. § 270.3(a).

2 Plaintiff testified during his deposition that he was permitted to turn around and view the search after he complained about having to face the wall. Higgins Dep. at 38, March 15, 2001 Rubin Aff. at Ex. 3.

3 Blaetz did not permit Plaintiff to ask a corrections officer whether it was policy to throw the inmates' belongings around the cell as she found it irrelevant to his innocence or guilt. *Id.* at 14.

4 At the completion of each hearing day, Plaintiff requested that he be released from "keep lock." Blaetz denied each request on the grounds that Plaintiff was considered dangerous to the institution because a weapon had been found in his cell. *Id.* 8–9; 17; 21.