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Due Process: Hillard v. Coughlin III

ordinance would probably have passed the rational basis test even if it had totally forbidden four or more unrelated persons from living together in a single family residence.[643]

THIRD DEPARTMENT

Hillard v. Coughlin III[644]
(decided February 3, 1993)

Petitioner, prison inmate, claimed that his state[645] and federal[646] constitutional rights to procedural due process were violated when Respondents denied his request to examine the videotapes and photographs reviewed by the Hearing Officer at his disciplinary proceeding.[647] The third department held that the denial of petitioner's request to reply to evidence used against him "implicated only the right to confrontation and cross examination"[648] since he was denied his regulatory right to reply to evidence against him.[649] The court further held that the evidence played a substantial role in the finding of guilt, and that the explanations as to why petitioner could not examine the evidence did not adequately enunciate "institutional safety and inmate privacy considerations."[650] Accordingly, the court granted petitioner a new hearing.[651]

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643. *Id.*

644. 187 A.D.2d 136, 593 N.Y.S.2d 573 (3d Dep't 1993).

645. N.Y. CONST. art. I, § 6.

646. U.S. CONST. amends. VI, XIV.

647. *Hillard*, 187 A.D. at 139, 593 N.Y.S.2d at 575.

648. *Id. at* 140, 593 N.Y.S.2d at 576.

649. *Id. See* N.Y. COMP. CODES R. & REGS. tit. VII, § 254.6(c) (1992). When an inmate is served with a misbehavior report a hearing is conducted, and N.Y.C.R.R. provides that "[t]he inmate . . . may reply orally to the charge and/or evidence and shall be allowed to submit relevant documentary evidence or written statements on his behalf." *Id.*

650. *Hillard*, 187 A.D.2d at 140, 593 N.Y.S.2d at 576 (quoting Bernier v. Mann, 166 A.D.2d 798, 799, 563 N.Y.S.2d 158, 159 (3d Dep't 1990)).

651. *Hillard*, 187 A.D.2d at 140, 593 N.Y.S.2d at 576.

Petitioner, an inmate at Southport Correctional Facility in Cheming County, was served with a misbehavior report.[652] The report resulted from petitioner's participation in the takeover of an outdoor exercise yard in the prison.[653] Specifically, the misbehavior report alleged violations of the Department of Correctional Services' rules on rioting[654] and leaving an assigned area without authorization.[655] At the disciplinary hearing, petitioner requested permission to view photographs and videotapes which were taken during the riot, however, his request was denied.[656] Subsequently, petitioner was found guilty on both charges.[657] In support of his finding, the Hearing Officer cited to the misbehavior report, the testimony of prison officials, and the videotapes in question.[658] Following unsuccessful administrative review, petitioner brought this C.P.L.R. article 78[659] proceeding to annul the determination on the grounds that his constitutional right to procedural due process had been violated because, inter alia, Respondent denied his request to examine the videotapes of the riot.[660]

The court held that petitioner's regulatory right to reply to the evidence was violated, reasoning that the videotapes played an

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652. *Id.* at 137, 593 N.Y.S.2d at 574.

653. *Id.*

654. *See* N.Y. COMP. CODES R. & REGS. tit. VII, § 270.2(B)(5)(i) (1989). Department of Correctional Services rule 104.10 provides in pertinent part that "[i]nmates shall not conspire or take any action which is intended to or results in the takeover of any area of the facility . . . ." *Id.*

655. *Hillard*, 187 A.D.2d at 140, 593 N.Y.S.2d at 576; *see* N.Y. COMP. CODES R. & REGS. tit. VII, § 270.2(B)(10)(ii) (1989). Department of Correctional Services rule 109.11 provides that "[i]nmates shall not leave an assigned area without authorization." *Id.*

656. *Hillard*, 187 A.D.2d at 137, 593 N.Y.S.2d at 574.

657. *Id.* at 138, 593 N.Y.S.2d at 574.

658. *Id.*

659. N.Y. CIV. PRAC. L. & R. art. 78 (McKinney 1991).

660. *Hillard*, 187 A.D.2d at 139, 593 N.Y.S.2d at 575. The court noted that there was substantial evidence in support of finding Petitioner guilty. *Id.* In addition, the court quickly dismissed Petitioner's arguments that the misbehavior report did not adequately describe the misconduct and that due process was denied by Respondent's failure to record a session. *Id.* at 138-39, 593 N.Y.S.2d at 575.

essential role in finding him guilty, and that the reasons for refusing his request to examine the evidence did not adequately articulate "institutional safety and inmate privacy considerations."[661] The court noted that although constitutional rights are diminished in the disciplinary hearing context,[662] inmates should be permitted to call witnesses and present evidence when institutional safety will not be unduly threatened.[663] If, however, disclosure of evidence is deemed to be hazardous to institutional safety or correctional goals, such evidence may remain confidential despite the Hearing Officer's reliance on it in rendering a decision.[664] Nevertheless, the court concluded that if documents are to remain confidential, the evidence must be "'submitted to the reviewing court for *in camera* inspection [and] the hearing officer must, at the time of the hearing, inform the inmate that he will consider certain information which will remain confidential and articulate some reason for keeping the information confidential.'"[665]

In *Hillard*, the court observed that Respondent had alerted petitioner to the fact that the videotapes would be considered and informed him that he could not view the tapes because "other inmates [were] there."[666] Nonetheless, if petitioner had been able to examine the videotapes, he could have identified himself on the tape and negated any adverse evidence used against him.[667] Hence, the court concluded that the videotapes played an

661. *Hillard*, 187 A.D.2d at 140, 593 N.Y.S.2d at 576 (quoting Bernier v. Mann, 166 A.D.2d 798, 799, 563 N.Y.S.2d 158, 159 (3d Dep't 1990)).

662. *Id.* at 139, 593 N.Y.S.2d at 575 (citing Wolff v. McDonnell, 418 U.S. 539, 560 (1974)).

663. *Hillard*, 187 A.D.2d at 139, 593 N.Y.S.2d at 575; *see also* Amato v. Ward, 41 N.Y.2d 469, 472-73, 362 N.E.2d 566, 569, 393 N.Y.S.2d 934, 936 (1977).

664. *Hillard*, 187 A.D.2d at 139, 593 N.Y.S.2d at 575.

665. *Id.* (quoting Boyd v. Coughlin, 105 A.D.2d 532, 533, 481 N.Y.S.2d 769, 770 (3d Dep't 1984). The *Hillard* court stated that "[c]oncerns for institutional safety may rationally be invoked to defend limitations on prisoners' constitutional rights . . . provided the request is reasonably related to legitimate security interests'" *Id.* (citations ommitted).

666. *Hillard*, 187 A.D.2d at 139, 593 N.Y.S.2d at 575.

667. *Id.* at 139-40, 593 N.Y.S.2d at 575-76.

important role in the Hearing Officer's finding that petitioner was guilty.[668] Moreover, the explanations as to why petitioner could not examine the evidence did not adequately articulate "institutional safety and privacy considerations."[669] Consequently, the Court held the petitioner had been denied his regulatory right to reply to the evidence against him and accordingly, granted petitioner a new hearing.[670]

Inmate procedural due process rights in the federal realm is delineated in *Wolff v. McDonnell.*[671] In *Wolff*, the Supreme Court addressed the issue of whether procedural due process right guarantees extend to inmates while participating in disciplinary

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668. *Id.* at 140, 593 N.Y.S.2d at 576. *Compare* Boyd v. Coughlin 105 A.D.2d 532, 534, 481 N.Y.S.2d 769, 771 (3d Dep't 1984) (although Hearing Officer should have informed Petitioner of reasons for confidentiality error was harmless since documents were irrelevant).

669. *Id.* (quoting Bernier v. Mann, 166 A.D.2d 798, 799, 563 N.Y.S.2d 158, 159 (3d Dep't 1990)). *Compare* Pinargote v. Berry, 147 A.D.2d 746, 748, 537 N.Y.S.2d 339, 341 (3d Dep't 1989) (advising Petitioner that identification of informant would jeopardize his safety is an adequate explanation) *and* Odom v. Kelly, 152 A.D.2d 1010, 543 N.Y.S.2d 811, 812 (4th Dep't 1989) (Petitioner not entitled to information regarding informant's identity and testimony because confidentiality was necessary to protect inmate's safety).

670. *Hillard*, 187 A.D.2d at 140, 593 N.Y.S.2d at 576. The court declined to endorse expungement as an appropriate remedy. *Id*

Expungement is required only when (1) the challenged disciplinary determination is not supported by substantial evidence; (2) there has been a violation of one of the inmate's fundamental due process rights as enunciated in Wolff v. McDonnell, 418 U.S. 539 [(1974)] . . . ; or (3) other equitable consideration dictate expungement of the record rather than remittal for a new hearing. *Id.*

As to the first precondition, the court observed that the Hearing Officer's determination is supported by substantial evidence. *Id.* The second element is not satisfied because Petitioner's request to examine the videotapes involved the right to confrontation and cross-examination, which the Supreme Court expressly excluded from inmate due process rights. *Id.* As to the third prerequisite, the court concluded that equity does not require expungement. *Id.* Thus, the court ruled that a new hearing, and not expungement, is the appropriate remedy in this case. *Id. See also* Freeman v. Coughlin, III, 138 A.D.2d 824, 825-26, 525 N.Y.S.2d 744, 745 (3d Dep't 1988) (new hearing granted where Petitioner was not given an explanation for confidentiality).

671. 418 U.S. 539 (1974).

hearings.[672] The Court ultimately decided that inmate disciplinary hearings do not demand all of the procedural due process rights guaranteed in probation and parole revocation hearings. Specifically, inmates participating in inmate disciplinary hearings are not entitled to the right to confront or cross examine witnesses.[673] Nor are inmates guaranteed the right to counsel at such hearings.[674] According to the Supreme Court, allowing these procedures would disrupt the prison setting and cause resentment among prisoners.[675] The Court reasoned that special circumstances surround inmate disciplinary hearings, including the fact that these hearings "take place in a closed, tightly controlled environment" an that they "involve confrontations between inmates and authority and between inmates who are being disciplined and those who would charge or furnish evidence against them."[676] Because prison officials closely supervise and control inmate activities, courts must give deference to prison officials' disciplinary decisions so as to promote inmate respect for prison officials.[677] Consequently, it was the culmination of these factors which weighed heavily in the Court's decision to deny extending the rights of confrontation and cross-examination to inmates in disciplinary hearings.

However, the Court did hold that certain minimum procedural requirements include at least twenty-four hour advance written notice of the hearing on the claimed violation, an opportunity to be heard, a conditional right to call witnesses and present evidence unless doing so would jeopardize prison security, or correctional goals, and a written statement detailing the evidence relied on and reasons for the disciplinary action.[678] In the event that a prison official refuses to allow an inmate to call a witness at a disciplinary hearing, they must provide an explanation, however, they may do so on the record during the hearing or in

672. *Id.* at 553.
673. *Id.* at 567-68.
674. *Id.* at 570.
675. *Id.* at 567-70.
676. *Id.* at 567-68.
677. *Id.*
678. *Id.* at 563-67.

court if the denial is subsequently challenged.[679] Furthermore, the explanations for denying permission to present witnesses must be logically related to institutional safety or correctional goals.[680]

In conclusion, New York law, in contrast to federal law,[681] provides an inmate with the procedural due process rights to confrontation and to cross-examination while participating in disciplinary proceedings.[682] Furthermore, in the event that such requests are denied, prison officials are required to articulate a rational basis for the denied requests.[683] While, the Supreme Court has articulated certain minimum procedural requirements, the right to confrontation and cross-examination as set forth in New York constitutional law, are absent as a matter of federal constitutional law.[684]

679. Ponte v. Real, 471 U.S. 491, 497 (1985). The Court noted that the additional administrative burden created by requiring contemporaneous reasons would "detract from the ability to perform the principal mission of the institution." *Id.* at 498.

680. *Id.* at 497.

681. Inmates' constitutional rights are implemented by the prison regulations in New York State. Laureano v. Kuhlmann, 75 N.Y.2d 141, 146, 550 N.E.2d 437, 443, 551 N.Y.S.2d 184, 190 (1990).

682. Hillard v. Coughlin, 187 A.D.2d 136, 140, 593 N.Y.S.2d 573, 576 (3d Dep't 1993).

683. *Id.*

684. Wolff v. McDonnell, 418 U.S. 539, 566-68 (1974).