

STATE OF MICHIGAN
IN THE 13TH CIRCUIT COURT FOR THE COUNTY OF GRAND TRAVERSE

BRIAN SAYLOR,

Petitioner,

v

Case No. 01-21687-AA
HON. PHILIP E. RODGERS, JR.

MICHIGAN DEPARTMENT OF
CORRECTIONS,

Respondent.

Brian Saylor #163642
Petitioner in Pro Per

Allan J. Soros (P43702)
Michigan Department of Attorney
General Corrections Division
Attorney for Respondent

OPINION ON APPEAL

The Petitioner is a prison inmate in the custody of Respondent, Michigan Department of Corrections. The Petitioner filed a Petition for Judicial Review challenging the February 7, 2001 decision of the Hearing Officer on a major misconduct violation; to wit: Unauthorized Occupation of Cell or Room, pursuant to MCL 791.255. The Petitioner's Request for Rehearing was denied. A major misconduct report for Unauthorized Occupation of Cell or Room is defined by the Department of Corrections disciplinary policy, PD: 03-03-105 as follows:

Unauthorized Occupation of Cell or Room

Being in another prisoner or prisoners' cell or room, or clearly defined living area, without specific authorization from staff; being present in any cell, room, or other walled area with another prisoner or prisoners or a member of members of the public without staff authorization.

On January 17, 2001, Petitioner was issued a misconduct ticket when Officer Creisher, while making rounds, observed another prisoner in Petitioner's cell. In the misconduct report, Officer Creisher wrote:

On the above time and date while making routine rounds I directly observed Resident Delarosa in Saylor's room. Resident Saylor allowed resident Delarosa 253356 in his room without staff permission. He made no attempt to have Delarosa removed from his cell by stiff [sic]. I'D [sic] by master count Beard and prior contact [sic].

Petitioner requested a hearing which was originally scheduled for January 22, 2001. The hearing was adjourned because the misconduct report "did not allege a material fact, that Saylor was in the room sitting across from Delarosa." There was a reference in the Major Misconduct Hearing Report to Officer Creisher's statement that "Delarosa was sitting across from Saylor in Saylor's room." The Hearings Investigator was requested to contact an officer (other than Officer Creisher) to determine (1) whether it is possible to see into Saylor's room from where Officer Creisher stated she was when she observed Delarosa in Saylor's room and (2) whether two prisoners can sit across from one another in Saylor's room.

Regular Unit Officer Boulton filed a statement that he "could see both lockers and half of the bunk beds" or "half (the east half) of inmates Saylor's and Franco's room" from where Officer Creisher said she was standing when she saw Delarosa in Saylor's room. The Hearings Investigator determined that there were two ways in which it is possible for two prisoners to sit across from one another in Saylor's room: "1. The prisoner's [sic] can sit 'across' from one another ON THE BED; or 2. ONE ON THE BED AND THE OTHER 'across' FROM THE BED ON THE DESK." The Hearings Investigator provided a diagram of Saylor's room showing these two possibilities.

Based on this evidence, the Hearing Officer concluded that "**Mr DeLaRosa was in Mr Saylor's room.**" [Emphasis added.]

Petitioner requested a rehearing, but his request was denied because “[t]he hearing officer relied on the statement of staff in finding that **you were in the room of another prisoner without authorization . . .**” [Emphasis added.]¹

Petitioner filed this appeal. Petitioner contends that (1) the charge of Unauthorized Occupation of Cell or Room requires a finding that he was in his room at the same time as prisoner Delarosa, (2) that fact is absent from the record and, therefore, (3) there is no factual or legal support for the determination of the hearing officer.

Pursuant to MCL 791.255 review of this matter is confined to the record. The scope of review is limited to whether the Department’s action is authorized by law or rule and whether the decision or order is supported by competent, material and substantial evidence on the whole record. The Court may affirm, reverse or modify the decision or order or remand the case for further proceedings.

The Court has reviewed the copy of the Michigan Department of Corrections’ record of the February 7, 2001 Administrative Hearing that was attached to the Respondent’s Motion to Affirm. The only mention in the record of Saylor being present in his room at the same time as Delarosa is on page 3 where the following sentence appears: “Prisoner was also informed of the reporting officer’s statement that Delarosa was sitting across from Saylor in Saylor’s room . . .” The “officer’s statement” itself was not made a part of the record. More importantly, the statement by RUO Boulton of what he could see from where Officer Creisher said she was standing and the diagram of Saylor’s cell conclusively establish that Officer Creisher could **not** have seen Saylor and Delarosa sitting “across from one another” in Saylor’s cell. According to RUO Boulton’s statement, he could see the east half of the cell. On the diagram showing how two inmates can “sit across from one another” in Saylor’s room, the position of only one person is in the east half of the cell. Therefore, Officer Creisher could not have seen Delarosa and

¹ There was never an allegation that Saylor was in the room of another prisoner without authorization and that was not the finding of the hearing officer. Reaching this conclusion and using it to deny Saylor’s request for rehearing is unsettling. The Court would hope that the individual who reviewed Mr. Saylor’s request for rehearing spent adequate time reviewing the case to appreciate the nature of the charges and the evidence needed to support a finding of a violation. This was apparently not the case.

Saylor in Saylor's cell. The record before the Court will only support a finding that resident Delarosa was in resident Saylor's cell as reported in Officer Creisher's initial misconduct report and as found by the Hearing Officer. As a matter of law, this evidence is insufficient to establish Saylor's presence and therefore Saylor's violation of the Unauthorized Occupation disciplinary rule.

For the reasons stated herein, the decision of the Hearing Officer is reversed and the major misconduct charge against Petitioner is dismissed with prejudice. No sanctions are ordered.

IT IS SO ORDERED.

This Opinion resolves the last pending issue and closes this case.

HONORABLE PHILIP E. RODGERS, JR.
Circuit Court Judge

Dated: s/ 2/6/02