

104 A.D.3d 1197
Supreme Court, Appellate Division, Fourth
Department, New York.

In the Matter of Paul COOKHORNE,
Petitioner–Plaintiff,

v.

Brian FISCHER, Commissioner, New York State
Department of Corrections and Community
Supervision, Respondent–Defendant.

March 15, 2013.

Synopsis

Background: Prisoner brought hybrid action pursuant to Article 78 seeking to review a determination of Commissioner of Department of Corrections and Community Supervision that the prisoner had violated inmate disciplinary rules and for an order declaring that the age of sixteen and seventeen year old prisoners housed in adult correctional facilities must be considered by Commissioner as a mitigating factor in all disciplinary proceedings. The Supreme Court, Erie County, Donna M. Siwek, J., transferred action.

Holdings: The Supreme Court, Appellate Division, held that:

[1] request for declaratory judgment was not subject to transfer;

[2] substantial evidence supported determination that prisoner violated inmate rules; and

[3] discipline imposed was so disproportionate to the offense as to be shocking to one’s sense of fairness.

Confirmed as modified.

Attorneys and Law Firms

****798** Karen Murtagh, Executive Director, Prisoner’s Legal Services of New York, Buffalo (Maria E. Pagano of Counsel), for Petitioner–Plaintiff.

Eric T. Schneiderman, Attorney General, Albany (Frank Brady of Counsel), for Respondent–Defendant.

PRESENT: CENTRA, J.P., FAHEY, CARNI,
SCONIERS, AND VALENTINO, JJ.

Opinion

****799** MEMORANDUM:

[1] ***1197** In this hybrid CPLR article 78 proceeding and declaratory judgment action, petitioner-plaintiff (petitioner) challenges the determination following a Tier III prison disciplinary hearing finding him guilty of violating various inmate rules, including inmate rules 100.11 (7 NYCRR 270.2[B][1][ii] [assault on staff]) and 104.11 (7 NYCRR 270.2[B][5] [ii]), and requests certain declaratory relief. The charges stem from an incident in which petitioner was alleged to have injured a correction officer. As a preliminary matter, we note that we do not have jurisdiction to consider the declaratory judgment action as part of this otherwise properly transferred CPLR article 78 proceeding. We therefore vacate the order insofar as it transferred ***1198** the declaratory judgment action, sever the declaratory judgment action and CPLR article 78 proceeding, and remit the declaratory judgment action to Supreme Court for further proceedings (see *Matter of Applegate v. Heath*, 88 A.D.3d 699, 700, 930 N.Y.S.2d 882; *Matter of Coleman v. Town of Eastchester*, 70 A.D.3d 940, 941, 895 N.Y.S.2d 478; see also *Matter of Cram v. Town of Geneva*, 182 A.D.2d 1102, 1102–1103, 583 N.Y.S.2d 83).

[2] We reject petitioner’s contention that the record lacks substantial evidence to support the determination that he violated the various inmate rules as charged in the misbehavior report. Substantial evidence “means such relevant proof as a reasonable mind may accept as adequate to support a conclusion or ultimate fact” (300 *Gramatan Ave. Assoc. v. State Div. of Human Rights*, 45 N.Y.2d 176, 180, 408 N.Y.S.2d 54, 379 N.E.2d 1183). We conclude that the misbehavior report, the testimony of a correction officer and the photographic evidence constitute substantial evidence that petitioner violated the charged inmate rules (see *Matter of Bryant v. Coughlin*, 77 N.Y.2d 642, 647, 569 N.Y.S.2d 582, 572 N.E.2d 23).

[3] We agree with petitioner, however, that the punishment imposed of four years’ confinement in the Special Housing Unit (SHU) together with four years’ loss of

good time and various privileges “ ‘is so disproportionate to the offense, in the light of all the circumstances, as to be shocking to one’s sense of fairness’ ” (*Matter of Pell v. Board of Educ. of Union Free School Dist. No. 1 of Towns of Scarsdale & Mamaroneck, Westchester County*, 34 N.Y.2d 222, 233, 356 N.Y.S.2d 833, 313 N.E.2d 321; *see generally Matter of Ciotoli v. Goord*, 256 A.D.2d 1192, 1193, 683 N.Y.S.2d 683). When considering the fact that petitioner was only 17 years old at the time of the incident, all of the circumstances surrounding the incident, as well as the disciplinary guidelines of respondent–defendant, we conclude that the maximum penalty that should have been imposed in this case is 18 months’ confinement in the SHU together with the loss of 18 months’ good time credit and 18 months’ loss of phone, commissary and package privileges. We therefore modify the determination accordingly. Finally, we note that nothing herein should be construed as limiting the scope of the issues to be litigated or the relief to which petitioner may be entitled in deciding the causes of action pleaded in the declaratory judgment action.

It is hereby ORDERED that the order insofar as it transferred that part of the proceeding/action seeking declaratory relief is unanimously vacated without costs, the declaratory judgment action and CPLR article 78 proceeding are severed, the declaratory judgment action is remitted to Supreme Court, Erie County, for further proceedings, and the determination is modified in the exercise of discretion **800 and the petition in the CPLR article 78 proceeding is granted in part by reducing the penalties of confinement in the Special Housing Unit and loss of good time and other privileges to a period of 18 months and as modified the determination is confirmed without costs.

Parallel Citations

104 A.D.3d 1197, 960 N.Y.S.2d 798, 2013 N.Y. Slip Op. 01678
