

STATE OF VERMONT

SUPERIOR COURT
Caledonia Unit

CIVIL DIVISION
Docket No. 94-4-20 Osev

COREY BETIT
Plaintiff

VERMONT SUPERIOR COURT

v.

NOV 30 2020

GREG HALE, Interim Superintendent,
Northern State Correctional Facility
Defendant

ORLEANS UNIT

DECISION
Cross-Motions for Summary Judgment

Plaintiff-Inmate Corey Betit seeks Rule 75 review of a disciplinary conviction for the misuse of authorized medication, a Major A30 violation. The parties filed cross-motions for summary judgment, and oral argument was held on November 19, 2020. Mr. Betit is represented by Attorney Jill P. Martin. Mr. Hale, who was Interim Superintendent of the prison where Mr. Betit was an inmate, was represented by Attorney Patrick T. Gaudet.

Mr. Betit was found guilty at a disciplinary hearing on April 8, 2020 of a Major B30 violation, which is defined as "Misuse of authorized medication, including, but not limited to, inmates transferring or selling their medication to another inmate." He exhausted administrative appeal procedures before filing this Rule 75 Complaint for Review of Governmental Action.

The material facts are not in dispute. Mr. Betit was in a medication line for the purpose of receiving medication. At first when he was ready for a mouth check (prior to receiving medication), he stuck his tongue out at the officer. When told to do a proper mouth check he moved his tongue on his upper right gum line and made a swallowing motion. He was told to leave the medication line and told he would get his medication later. He never received that dose of medication. Later in the day Mr. Betit approached the officer and apologized and promised he would never do it again. The officer said, "you tried pulling one over my head correct?" He responded, "yes."

The hearing officer made the following findings of fact:

1. I/M Betit attended MAT call; 2. When completing a initial mouth check, I/M Betit only stuck out his tongue. 3. I/M Betit was asked to perform a second mouth check, at which time he was observed I/M Betit was observed moving his tongue toward his upper right gumline, then swallowing; 4. COI Paxton asked I/M Betit if he tried pulling one over on him, at which time I/M Betit responded with yes.

The hearing officer found Mr. Betit guilty of misuse of authorized medication, and the finding of guilty was upheld upon administrative review.¹

When reviewing an inmate disciplinary decision, the court “need find only that there was ‘some evidence’ in order to uphold a conviction.” *King v. Gorczyk*, 2003 VT 34, ¶ 7, 175 Vt. 220 (quoting *LaFaso v. Patrissi*, 161 Vt. 46, 49 (1993)). This standard is met when “there is any evidence in the record that could support the conclusion reached by the disciplinary board.” *Id.*

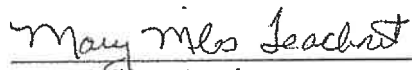
Petitioner argues that there is no evidence at all of misuse, because the facts are clear that Mr. Betit never received any medication during the incident. Defendant argues that DOC Directive 401.01 prohibits attempted violations as well as completed violations and an attempt carries the same sanction as a completed violation. He argues that it can be inferred that Mr. Betit had something in his mouth into which he was going to insert medication for later misuse and which he got rid of by swallowing, and that it can be inferred from the later response of “yes” that Mr. Betit was confirming that he had been attempting misuse of the medication he was about to receive. Defendant argues that this is sufficient to satisfy the “some evidence” standard on review in this court. Petitioner argues that he was not charged with an attempt and had no notice of such a charge.

The record does not show that “attempt” was ever considered as the basis for the allegation or finding of violation. The Hearing Officer did not find Mr. Betit guilty of an attempt, but rather of actual misuse. A B30 is a major violation for serious conduct—misusing authorized medication—defined as “including, but not limited to, inmates transferring or selling their medication to another inmate.” It is inappropriate to analyze whether the evidence could have supported a claim of an *attempt* to violate B30 when he was not found guilty of an attempt, but rather of a completed violation. His conduct could not support a completed violation of misuse of authorized medication when he never had any. There is not “some evidence” of actual misuse.

ORDER

For the foregoing reasons, Mr. Betit’s motion for summary judgment is *granted*, and the State’s motion for summary judgment is *denied*.

Dated this ____ 23rd day of November 2020.



Mary Miles Teachout
Superior Judge

¹ While the Hearing Report mislabels the charge as a B20, the parties agree that the finding of guilt was for a B30 misuse of authorized medication.