

State of New York
Supreme Court, Appellate Division
Third Judicial Department

Decided and Entered: October 30, 2008

504480

In the Matter of GERARD
DOMOND,
Petitioner,

v

MEMORANDUM AND JUDGMENT

BRIAN FISCHER, as Commissioner
of Correctional Services,
et al.,
Respondents.

Calendar Date: September 24, 2008

Before: Mercure, J.P., Peters, Rose, Malone Jr. and
Kavanagh, JJ.

Gerard Domond, Elmira, petitioner pro se.

Andrew M. Cuomo, Attorney General, Albany (Peter H. Schiff
of counsel), for respondents.

Proceeding pursuant to CPLR article 78 (transferred to this
Court by order of the Supreme Court, entered in Albany County) to
review a determination of respondent Commissioner of Correctional
Services which found petitioner guilty of violating certain
prison disciplinary rules.

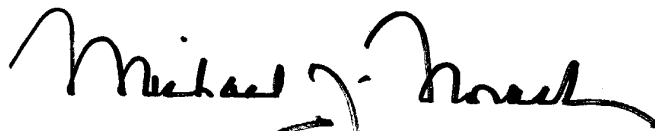
Petitioner, a prison inmate, was charged in a misbehavior
report with engaging in lewd conduct and disobeying a direct
order. Following a tier III disciplinary hearing, petitioner was
found guilty of both charges. That determination was
administratively affirmed and this CPLR article 78 proceeding
seeking annulment ensued.

We confirm. Preliminarily, inasmuch as the petition challenges the sufficiency of the evidence supporting the determination of guilt, a question of substantial evidence has been raised which justified the transfer of this matter to this Court (see Matter of Encarnacion v Goord, 8 AD3d 843, 844 [2004], lv denied 3 NY3d 607 [2004]). Turning to the merits, the misbehavior report, together with the hearing testimony from the facility nurse who was involved in the incident and authored the report, comprises substantial evidence to support the determination (see Matter of Adams v Selsky, 54 AD3d 477, 478 [2008]). Petitioner's remaining procedural contentions, including his claims that he was denied the right to present witness testimony and that the Hearing Officer was biased, have been examined and found to be unavailing.

Mercure, J.P., Peters, Rose, Malone Jr. and Kavanagh, JJ., concur.

ADJUDGED that the determination is confirmed, without costs, and petition dismissed.

ENTER:

A handwritten signature in black ink, appearing to read "Michael J. Novack". The signature is fluid and cursive, with a large loop at the end.

Michael J. Novack
Clerk of the Court