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

Decided and Entered: October 30, 2008 504637

In the Matter of FREDERICK L. ENGLISH,

Petitioner,

v

MEMORANDUM AND JUDGMENT

BRIAN FISCHER, as Commissioner of Correctional Services,
Respondent.

Calendar Date: September 24, 2008

Before: Cardona, P.J., Carpinello, Rose, Kavanagh and Stein, JJ.

Frederick L. English, Auburn, petitioner pro se.

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

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 which found petitioner guilty of violating certain prison disciplinary rules.

Petitioner, a prison inmate, was charged in a misbehavior report with refusing a direct order, violating frisk procedures and smuggling. At the conclusion of the ensuing tier III disciplinary hearing, petitioner was found guilty of all three charges. That determination was affirmed upon administrative appeal, prompting petitioner to commence this CPLR article 78 proceeding seeking annulment.

We confirm. The misbehavior report and testimony adduced at the hearing, together with reasonable inferences drawn

therefrom, provide substantial evidence to support the determination of guilt (\underline{see} <u>Matter of Bennett v Inmate</u> $\underline{Disciplinary\ Programs}$, 306 AD2d 663, 664 [2003]). As for petitioner's remaining contentions, including his claim that he was deprived of a fair and impartial hearing, they have been considered and found to be unavailing.

Cardona, P.J., Carpinello, Rose, Kavanagh and Stein, JJ., concur.

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

ENTER:

Michael J. Novack Clerk of the Cour