

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

Decided and Entered: January 22, 2009

504372

In the Matter of MARK BARRETT,
Petitioner,

v

MEMORANDUM AND JUDGMENT

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

Calendar Date: November 24, 2008

Before: Spain, J.P., Rose, Lahtinen, Kane and Malone Jr., JJ.

Mark Barrett, New York City, 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 violating frisk procedures, refusing a direct order, interfering with an employee, assaulting a staff member and engaging in violent conduct. Petitioner was thereafter charged in a second misbehavior report with possessing a document depicting diagrams of portions of the facility. Following a combined tier III disciplinary hearing, petitioner was found guilty of all charges. Upon administrative appeal, that determination was modified by dismissing only the facility

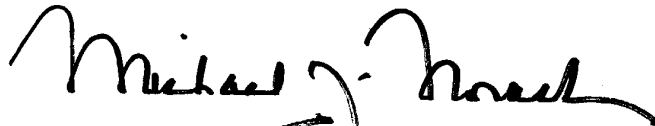
document charge set forth in the second misbehavior report. Petitioner then commenced this CPLR article 78 proceeding seeking annulment of the determination.

We confirm. The first misbehavior report, together with testimony adduced at the hearing, provide substantial evidence to support the determination of guilt (see Matter of Triplett v Fischer, 54 AD3d 1075, 1076 [2008]). Petitioner's denial of the allegations and offering of a retaliation defense created credibility issues for resolution by the Hearing Officer (see Matter of Sloane v McKinney, 48 AD3d 850, 850 [2008]). Regarding petitioner's assertion that the Hearing Officer was biased, it is neither substantiated by the record nor is there any indication that the determination flowed from any purported bias (see Matter of Sweat v Fischer, 52 AD3d 1142, 1143 [2008]). The remaining claims advanced by petitioner have been examined and found to be unavailing.

Spain, J.P., Rose, Lahtinen, Kane and Malone Jr., 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