

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

Decided and Entered: January 22, 2009

505041

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In the Matter of ISMAEL  
IGARTUA,  
Petitioner,

v

MEMORANDUM AND JUDGMENT

ISREAL RIVERA, as Superintendent  
of Coxsackie Correctional  
Facility, et al.,  
Respondents.

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Calendar Date: December 18, 2008

Before: Cardona, P.J., Peters, Lahtinen and Kane, JJ.

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Ismael Igartua, Wallkill, petitioner pro se.

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

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

At the conclusion of a tier II prison disciplinary hearing, petitioner was found guilty of creating a disturbance, harassment and refusing a direct order. That determination was affirmed upon administrative appeal and this CPLR article 78 proceeding seeking annulment ensued.

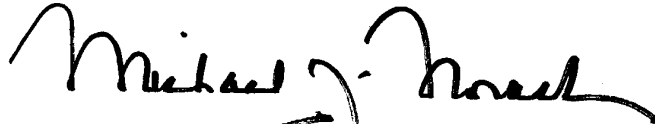
We confirm. The misbehavior report, authored by the correction officer involved in the incident, is sufficient by

itself to provide substantial evidence supporting the determination of guilt (see Matter of Adams v Goord, 45 AD3d 940, 940-941 [2007]). Although petitioner offered exculpatory evidence, this created a credibility issue for resolution by the Hearing Officer (see Matter of Graham v Goord, 43 AD3d 526, 526 [2007]). Petitioner's remaining assertions, including his claims that he was denied the right to present witness testimony and that the hearing transcript is inadequate for appellate review, have been examined and, to the extent preserved, are unavailing.

Cardona, P.J., Peters, Lahtinen and Kane, 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