

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

Decided and Entered: June 18, 2009

505525

In the Matter of GARY SESSOMS,
Petitioner,

v

MEMORANDUM AND JUDGMENT

COMMISSIONER OF CORRECTIONAL
SERVICES et al.,
Respondents.

Calendar Date: May 13, 2009

Before: Peters, J.P., Lahtinen, Kane, Kavanagh and Garry, JJ.

Gary Sessoms, Elmira, petitioner pro se.

Andrew M. Cuomo, Attorney General, Albany (Martin A. Hotvet
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.

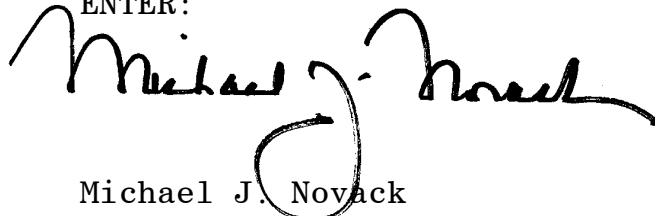
As the result of an investigation during which correction officials monitored telephone conversations that petitioner had with his wife, petitioner was charged in a misbehavior report with conspiring to introduce drugs into the correctional facility and soliciting another to smuggle drugs into the facility. He was found guilty of the charges at the conclusion of a tier III disciplinary hearing. After the determination was upheld on administrative appeal, petitioner commenced this CPLR article 78 proceeding.

We confirm. The misbehavior report, together with the testimony of its author and the confidential testimony considered by the Hearing Officer in camera, provide substantial evidence supporting the determination of guilt (see Matter of Samuel v Fischer, 53 AD3d 960, 960 [2004]; Matter of Toledo v Selsky, 12 AD3d 824, 824-825 [2004]). Contrary to petitioner's claim, the reliability of the confidential informant was properly established through the personal interview conducted by the Hearing Officer (see Matter of Nova v Selsky, 54 AD3d 453, 454 [2008]; Matter of Adorno v Goord, 35 AD3d 930, 931 [2006]). Petitioner's claim that the misbehavior report did not provide adequate notice of the charges is unpreserved for our review given his failure to raise it at the hearing (see Matter of Tafari v Selsky, 41 AD3d 1117, 1117 [2007], lv denied 9 NY3d 809 [2007]). Although petitioner also failed to preserve his challenge to the sufficiency of the hearing transcript, were we to consider it, we would not find that the missing portion is so significant as to prevent meaningful review (see Matter of Pineda v Goord, 35 AD3d 977 [2006]).

Peters, J.P., Lahtinen, Kane, Kavanagh and Garry, 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 written in a cursive style with a large, looping initial "M".

Michael J. Novack
Clerk of the Court