

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

Decided and Entered: April 10, 2003

92425

In the Matter of AARON UMBER,
Petitioner,

v

MEMORANDUM AND JUDGMENT

ROBERT J. MURPHY, as Acting
Special Housing Director,
et al.,
Respondents.

Calendar Date: March 26, 2003

Before: Cardona, P.J., Mercure, Peters, Carpinello and Rose, JJ.

Aaron UMBER, Elmira, petitioner pro se.

Eliot Spitzer, Attorney General, Albany (Wayne L. Benjamin of counsel), for respondents.

Mercure, J.

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

While on sick call, petitioner reported that he had been raped by his cellmate on more than one occasion. An investigation ensued which revealed that petitioner's claim was unfounded and that the sexual contact was consensual. As a result, petitioner was charged in a misbehavior report with violating prison disciplinary rules prohibiting inmates from engaging in sexual acts, having physical contact, participating

in the unauthorized exchange of personal property and providing misleading or false information. At a subsequent tier III disciplinary hearing, which was ordered after a prior hearing was administratively reversed, petitioner pleaded guilty to participating in the unauthorized exchange of personal property and was found guilty of all other charges. This determination was affirmed upon administrative appeal. Petitioner then commenced the instant CPLR article 78 proceeding challenging the determination.

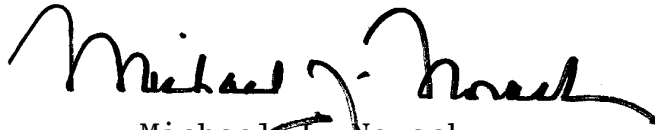
We confirm. Although petitioner challenges the sufficiency of the evidence relied upon by the Hearing Officer, the misbehavior report and the testimony of its author, together with the written statements of those involved in the investigation of the incident, provide substantial evidence supporting the determination (see Matter of Bankston v Selsky, ___ AD2d ___, 754 NYS2d 442; Matter of Torres v Goord, 267 AD2d 732, 733; Matter of Rodriquez v Goord, 261 AD2d 740, 741, lv denied 93 NY2d 818). The author of the misbehavior report stated that petitioner's cellmate confirmed that sexual contact had occurred, but indicated that it was consensual, with petitioner having initiated it. He further testified that, based upon interviews with staff and other individuals, it was known throughout the facility that petitioner and his cellmate were involved in a homosexual relationship. He further stated that petitioner's complaint appeared to be part of a scheme to bring a lawsuit against the state. Although petitioner maintained that he was forcibly raped and denied that his complaint was in any way related to the lawsuit he commenced against the state, this testimony presented a credibility issue for the Hearing Officer to resolve (see Matter of Lopez v Selsky, 300 AD2d 975; Matter of Edwards v Goord, 298 AD2d 793, 794).

We have considered petitioner's remaining arguments and find them meritless.

Cardona, P.J., Peters, Carpinello and Rose, JJ., concur.

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

ENTER:



Michael J. Novack
Clerk of the Court

