

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

Decided and Entered: September 23, 2004

94069

In the Matter of RONNIE NELSON,
Petitioner,

v

MEMORANDUM AND JUDGMENT

GLENN S. GOORD, as Commissioner
of Correctional Services,
Respondent.

Calendar Date: August 9, 2004

Before: Cardona, P.J., Peters, Spain, Rose and Kane, JJ.

Ronnie Nelson, Moravia, petitioner pro se.

Eliot Spitzer, Attorney General, Albany (Patrick Barnett-Mulligan 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 two determinations of respondent which found petitioner guilty of violating certain prison disciplinary rules.

Petitioner was the subject of two misbehavior reports stemming from separate incidents. The first misbehavior report charged petitioner with possessing contraband, smuggling, altering a document and stealing another inmate's property. Based upon his plea of guilty, admissions during the hearing and information in the misbehavior report, petitioner was found guilty of possession of contraband and smuggling and not guilty of the remaining two charges. Petitioner's plea of guilty to the charges of possession of contraband and smuggling precludes his challenge to the determination on substantial evidence grounds (see Matter of La Tour v New York State Dept. of Correctional

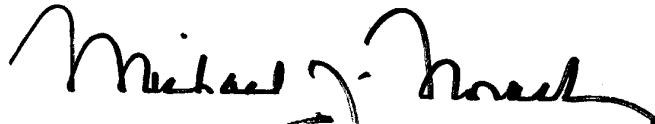
Servs. Cent. Off. Review Comm., 5 AD3d 890 [2004]; Matter of Pabon v Goord, 275 AD2d 824 [2000]).

The second misbehavior report related that, in the process of packing petitioner's cell for his transfer to the special housing unit, multiple items were confiscated and he was charged with smuggling, stealing and possession of contraband. Following a tier III hearing, petitioner was found guilty of possession of contraband. Contrary to petitioner's contention, the misbehavior report, together with petitioner's admission that he was aware that he was not authorized to possess some of the items but was too lazy to dispose of them, provide substantial evidence to support the determination of guilt (see Matter of Tyler v Goord, 278 AD2d 719 [2000]; Matter of Siesteski v Dibiase, 242 AD2d 753 [1997]). Petitioner's remaining contentions, including his challenge to comments made by the Hearing Officer at the second disciplinary hearing, have been reviewed and found to be without merit.

Cardona, P.J., Peters, Spain, Rose and Kane, JJ., concur.

ADJUDGED that the determinations are confirmed, without costs, and petition dismissed.

ENTER:



Michael J. Novack
Clerk of the Court