

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

Decided and Entered: June 17, 2004

94731

In the Matter of GREGORY
JACKSON,
Petitioner,

v

MEMORANDUM AND JUDGMENT

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

Calendar Date: May 7, 2004

Before: Cardona, P.J., Crew III, Spain, Mugglin and
Lahtinen, JJ.

Gregory Jackson, Malone, petitioner pro se.

Eliot Spitzer, Attorney General, Albany (Peter H. Schiff of
counsel), for respondent.

Proceeding pursuant to CPLR article 78 (transferred to this
Court by order of the Supreme Court, entered in Clinton County)
to review a determination of respondent which found petitioner
guilty of violating a prison disciplinary rule.

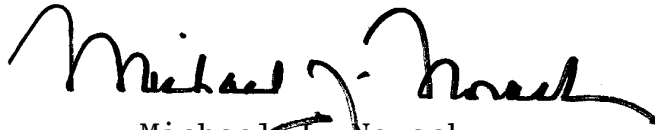
While incarcerated at Clinton Correctional Facility in
Clinton County, petitioner reportedly pressured another inmate to
send \$300 to his fiancée as payment for drugs the inmate had
previously purchased while at Elmira Correctional Facility in
Chemung County. As a result, he was charged in a misbehavior
report with extortion and making threats. Following a tier III
disciplinary hearing, petitioner was found guilty of extortion.
The determination was upheld on administrative appeal, resulting
in this CPLR article 78 proceeding.

Petitioner's sole contention is that the determination finding him guilty of extortion is not supported by substantial evidence. Based upon our review of the record, we disagree. The inmate who was the target of the scheme testified that, while at Elmira Correctional Facility, he purchased drugs from petitioner's friend and sent \$450 out of the facility to pay for the drugs. He stated that petitioner approached him after he was transferred to Clinton Correctional Facility and indicated that money had never been received, even though he had proof that the money was sent to petitioner's fiancée. He then related that petitioner instructed him to send \$300 as payment for the drugs or there would be "problems." Although petitioner acknowledged that the inmate has sent \$300 to his fiancée, he denied that it was to pay a drug debt, stating at one point that it was reimbursement for use of the Internet and postage, and at another that it was to assist petitioner's fiancée to get her car repaired. The misbehavior report and testimony at the hearing, both from petitioner and the inmate complainant, provide substantial evidence supporting the determination finding him guilty of extortion (see Matter of Rivera v Goord, 3 AD3d 634 [2004]). Petitioner's denial of wrongdoing presented a credibility issue for the Hearing Officer to resolve (see id. at 634; Matter of Galarza v Goord, 298 AD2d 739, 740 [2002]). Contrary to petitioner's claim, we do not find, under the circumstances presented, that the not guilty finding on the independent threat charge was inconsistent with the guilty finding on the extortion charge.

Cardona, P.J., Crew III, Spain, Mugglin and Lahtinen, JJ., concur.

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

ENTER:



Michael J. Novack
Clerk of the Court

