

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

Decided and Entered: July 15, 2004

95169

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In the Matter of JOSEPH S.  
GONCALVES JR.,  
Petitioner,

v

MEMORANDUM AND JUDGMENT

EDWARD R. DONNELLY, as  
Superintendent of Wende  
Correctional Facility,  
et al.,  
Respondents.

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Calendar Date: June 7, 2004

Before: Peters, J.P., Mugglin, Rose, Lahtinen and Kane, JJ.

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Joseph S. Goncalves Jr., Red Creek, petitioner pro se.

Eliot Spitzer, 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 Albany County) to review a determination of respondent Commissioner of Correctional Services which found petitioner guilty of violating certain prison disciplinary rules.

Petitioner was found guilty of violating the prison disciplinary rules prohibiting the making of threats, interference with an employee, engaging in violent conduct, and disturbing the order of the facility. According to the misbehavior report, petitioner became upset after a correction officer could not stay when petitioner said that he was not finished with her, and he began screaming racial epithets,

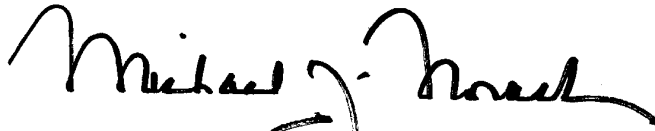
threats and profanity to her as she left his cell.

Substantial evidence, in the form of the detailed misbehavior report written by the correction officer involved, supports the determination (see Matter of Barnes v Goord, 279 AD2d 685 [2001]). The exculpatory testimony of petitioner and others presented a credibility issue that the Hearing Officer was free to resolve against petitioner (see Matter of Dowdy v Goord, 2 AD3d 1249, 1250 [2003]). We also note that petitioner has demonstrated no prejudice from the absence of the signature of a correction officer who witnessed the incident on his copy of the misbehavior report (see Matter of Davis v Goord, 302 AD2d 836, 837 [2003]). Nor is there anything in the record to support petitioner's argument that the Hearing Officer, who found petitioner not guilty of one of the charges in the misbehavior report, was biased or that the outcome of the hearing arose out of that alleged bias (see Matter of Valasquez v Miller, 250 AD2d 895 [1998]). We have considered petitioner's other arguments and find them to be without merit.

Peters, J.P., Mugglin, Rose, Lahtinen and Kane, JJ.,  
concur.

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

ENTER:



Michael J. Novack  
Clerk of the Court