

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

Decided and Entered: December 16, 2004

95814

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In the Matter of GERALD  
CHARLES,  
Petitioner,

v

MEMORANDUM AND JUDGMENT

DONALD SELSKY, as Director of  
Special Housing and Inmate  
Disciplinary Programs,  
Respondent.

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Calendar Date: November 3, 2004

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

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Gerald Charles, petitioner pro se.

Eliot Spitzer, Attorney General, Albany (Patrick Barnett-  
Mulligan of counsel), for respondent.

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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 the Commissioner of Correctional  
Services which found petitioner guilty of violating certain  
prison disciplinary rules.

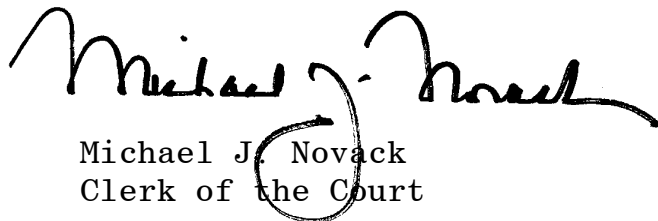
Petitioner challenges a determination finding him guilty of  
violating the prison disciplinary rules that prohibit altering an  
authorized item and possession of a weapon. According to the  
misbehavior report, a metal nail file imbedded in a pen and  
sticking out about three quarters of an inch was found in  
petitioner's locker. The fact that the contraband was found in  
an area within petitioner's control gives rise to an inference

that the weapon belonged to him (see Matter of Johnson v Goord, 7 AD3d 901 [2004]; Matter of Alston v Goord, 4 AD3d 708, 709 [2004]). This inference, together with the misbehavior report, picture of the altered pen and testimony at the hearing, provide substantial evidence to support the determination of guilt (see Matter of Cummings v Goord, 10 AD3d 748 [2004]; Matter of Davis v Senkowski, 306 AD2d 778 [2003]). Petitioner's contention that the pen did not belong to him presented a credibility issue for the Hearing Officer to resolve (see Matter of Cummings v Goord, supra).

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