

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

Decided and Entered: September 29, 2005

97475

In the Matter of LARRY PORTER,
Petitioner,

v

MEMORANDUM AND JUDGMENT

GLENN S. GOORD, as Commissioner
of Correctional Services,
et al.,
Respondents.

Calendar Date: August 8, 2005

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

Larry Porter, Pine City, petitioner pro se.

Eliot Spitzer, Attorney General, Albany (Marcus J. Mastracco of counsel), for respondents.

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 charged in a misbehavior report with harassing a prison employee and committing a sexual offense in violation of the prison disciplinary rules. He was found guilty of the charges following a tier III disciplinary hearing, which determination was affirmed upon administrative appeal. This CPLR article 78 proceeding ensued.

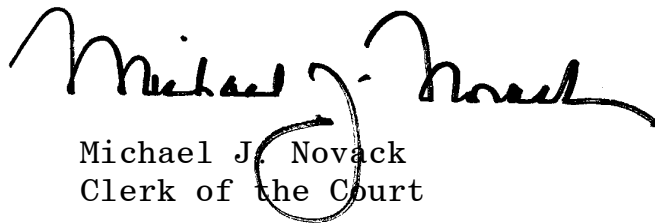
The misbehavior report, the testimony of the correction officer who authored it and the testimony of the prison employee

that petitioner harassed, together with the videotape of the incident, provide substantial evidence to support the determination of petitioner's guilt (see Matter of Ruggiero v Goord, 19 AD3d 907, 908 [2005]; Matter of Goncalves v Berbary, 14 AD3d 743, 744 [2005]). The record does not support petitioner's claim that the Hearing Officer was biased or that the determination of guilt flowed from any alleged bias (see Matter of Black v Goord, 12 AD3d 1005, 1006 [2004]; Matter of Johnson v Ricks, 297 AD2d 889, 890 [2002]). To the extent that they were preserved, petitioner's remaining contentions, including his claim of ineffective employee assistance, have been reviewed and found 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