

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

Decided and Entered: April 20, 2006

98149

In the Matter of GEORGE LOPEZ,
Petitioner,

v

MEMORANDUM AND JUDGMENT

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

Calendar Date: March 6, 2006

Before: Peters, J.P., Spain, Carpinello, Mugglin and Rose, JJ.

George Lopez, Altona, petitioner pro se.

Eliot Spitzer, Attorney General, Albany (Nancy A. Spiegel
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 a determination of the Commissioner of Correctional Services which found petitioner guilty of violating certain prison disciplinary rules.

Based upon an anonymous tip, petitioner's dormitory cube was searched, uncovering a tattooing machine hidden behind petitioner's locker and three unmarked plastic bottles directly under his bed which contained numerous unidentified pills. Petitioner was charged in a misbehavior report with possession of contraband, possession of unauthorized medication and possession of a tattoo machine. Following a disciplinary hearing, petitioner was found guilty of possession of contraband and possession of a tattoo machine and not guilty of possession of

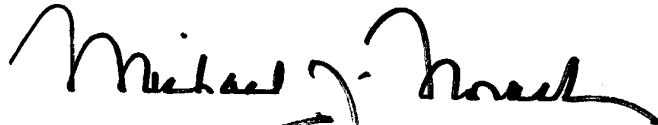
unauthorized medication. The determination was affirmed on administrative appeal and this CPLR article 78 proceeding ensued.

Contrary to petitioner's contention, the misbehavior report and corroborating testimony at the hearing provide substantial evidence to support the determination of guilt (see Matter of Cummings v Goord, 10 AD3d 748, 749 [2004]). Although petitioner did not have exclusive access to the area where the contraband items were found, a reasonable inference of possession arises from the fact that the contraband, found behind his locker and under his bed, were located in an area within his control (see id. at 749; Matter of Jackson v Selsky, 288 AD2d 802 [2001], lv denied 97 NY2d 612 [2002]; Matter of Stile v Goord, 285 AD2d 693 [2001]). Furthermore, petitioner's assertion that he had no knowledge that the items were there, as well as any alleged inconsistencies between the information in the misbehavior report and the author's testimony at the hearing, presented credibility issues for the Hearing Officer to resolve (see Matter of Vasile v Selsky, 20 AD3d 828 [2005]; Matter of Mitchell v Goord, 266 AD2d 614 [1999]). Finally, inasmuch as petitioner was found not guilty of possession of unauthorized medication, and having not been charged with drug possession or use, petitioner's challenge to the testing procedure used to identify the pills confiscated during the search is of no moment.

Peters, J.P., Spain, Carpinello, Mugglin and Rose, JJ.,
concur.

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

ENTER:



Michael J. Novack
Clerk of the Court