

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

Decided and Entered: January 26, 2006

98455

In the Matter of MITCHELL
KALWASINSKI,
Petitioner,

v

MEMORANDUM AND JUDGMENT

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

Calendar Date: December 28, 2005

Before: Crew III, J.P., Peters, Carpinello, Mugglin and
Lahtinen, JJ.

Mitchell Kalwasinski, Pine City, 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 Chemung County)
to review a determination of respondent which found petitioner
guilty of violating a prison disciplinary rule.

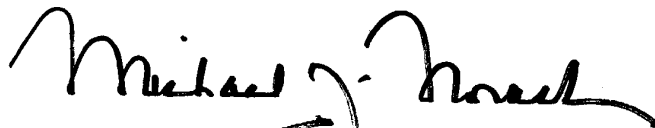
Petitioner was charged in a misbehavior report with
engaging in the unauthorized exchange of property and providing
unauthorized legal assistance after correction officers found
another inmate's legal papers in his cell. Following a tier III
disciplinary hearing, petitioner was found guilty of the
unauthorized exchange of property charge. The determination was
affirmed on administrative appeal, and this CPLR article 78
proceeding ensued.

We confirm. The misbehavior report, together with the testimony of its author and petitioner's admission that he possessed another inmate's papers, constitute substantial evidence supporting the determination finding him guilty of engaging in the unauthorized exchange of property. Petitioner's claim that the exchange was authorized because the papers were delivered to him by a correction officer presented a credibility issue for the Hearing Officer to resolve (see Matter of McAllister v Goord, 6 AD3d 829, 830 [2004]). Moreover, we find no merit to petitioner's contention that the misbehavior report violated 7 NYCRR 251-3.1, as it contained the necessary specificity to apprise petitioner of the charges so as to enable him to prepare an adequate defense (see Matter of London v Selsky, 247 AD2d 675 [1998]). We similarly are unpersuaded by petitioner's argument that the matter at hand should not have been designated for disposition via a tier III disciplinary hearing as such a hearing was appropriate for the rule violations at issue (see 7 NYCRR 270.2 [B] [14] [vi]; [26] [vii]). We have considered petitioner's remaining contentions, to the extent they are properly before us, and find them to be unavailing.

Crew III, J.P., Peters, Carpinello, Mugglin and Lahtinen, JJ., concur.

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

ENTER:

A handwritten signature in black ink, appearing to read "Michael J. Novack". The signature is fluid and cursive, with a large loop at the end.

Michael J. Novack
Clerk of the Court