

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

Decided and Entered: May 18, 2006

99191

In the Matter of CONRAD HINES,
Petitioner,

v

MEMORANDUM AND JUDGMENT

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

Calendar Date: April 12, 2006

Before: Crew III, J.P., Peters, Spain, Rose and Kane, JJ.

Conrad Hines, Comstock, petitioner pro se.

Eliot Spitzer, Attorney General, Albany (Patrick Barnett-Mulligan 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 respondent which found petitioner guilty of violating a prison disciplinary rule.

Through an investigation, correction officials discovered that petitioner was participating in gang-related activities, which included extorting and threatening another inmate. As a result, he was charged in a misbehavior report with engaging in unauthorized organizational activities. Petitioner was found guilty of the charge following a tier III disciplinary hearing and the determination was affirmed on administrative appeal with a modified penalty. This CPLR article 78 proceeding ensued.

We confirm. The misbehavior report and internal memorandum, together with the testimony of the correction

sergeant who authored these documents and that of the inmate who implicated petitioner as a gang member, provide substantial evidence supporting the determination of guilt (see Matter of Lamage v Selsky, 304 AD2d 1004, 1005 [2003]; Matter of Santiago v Goord, 287 AD2d 841, 841 [2001]). Inasmuch as the accusing inmate was not a confidential informant, the Hearing Officer was not required to undertake an independent in camera assessment of his credibility (compare Matter of Thomassini v Goord, 13 AD3d 954 [2004], appeal dismissed 5 NY3d 848 [2005]). Rather, the Hearing Officer could evaluate the inmate's reliability based upon the testimony he gave at the hearing. Petitioner's remaining contentions are not preserved for our review given his failure to make appropriate objections at the hearing (see Matter of Estrada v Goord, 26 AD3d 564 [2006]).

Crew III, J.P., Peters, Spain, Rose and Kane, 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