

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

Decided and Entered: November 21, 2007

500132

In the Matter of CHRIS
APPLEWHITE,

Appellant,

v

MEMORANDUM AND ORDER

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

Respondents.

Calendar Date: September 26, 2007

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

Chris Applewhite, Pine City, appellant pro se.

Andrew M. Cuomo, Attorney General, Albany (Peter H. Schiff
of counsel), for respondents.

Appeal from a judgment of the Supreme Court (Rumsey, J.),
entered January 4, 2006 in Albany County, which dismissed
petitioner's application, in a proceeding pursuant to CPLR
article 78, to review a determination of respondent Commissioner
of Correctional Services finding petitioner guilty of violating
certain prison disciplinary rules.

Alleging various procedural errors only, petitioner
challenges a determination finding him guilty of violating the
prison disciplinary rules that prohibit violent conduct,
interference with prison employees, refusing a direct order and

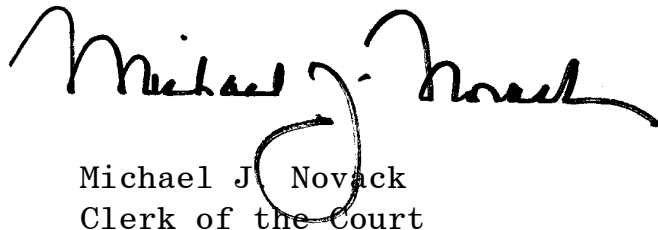
threats. Supreme Court dismissed the petition and petitioner appeals.

Upon a review of the record, we find petitioner's procedural challenges to be without merit. Because petitioner was already confined to the special housing unit at the time of the incident, the hearing was not required to be commenced within seven days (see 7 NYCRR 251-5.1 [a]; Matter of Striplin v Selsky, 28 AD3d 969 [2006]). In any event, "[a]bsent a showing that substantial prejudice resulted from the delay, the regulatory time limits are construed to be directory rather than mandatory" (Matter of Van Gorder v New York State Dept. of Correctional Servs., 42 AD3d 834, 835 [2007]). We are not persuaded that petitioner was improperly denied the right to present videotape evidence of the incident as the record indicates that no such videotape existed (see Matter of Cargill v Goord, 29 AD3d 1255 [2006]). Contrary to petitioner's contention, there is no impropriety with the appointment of an institutional steward to act as the hearing officer (see 7 NYCRR 254.1; Matter of Wright v Goord, 19 AD3d 855 [2005], lv denied 5 NY3d 711 [2005]). Petitioner's remaining contentions, including his claim of hearing officer bias, have been reviewed and determined to be without merit.

Spain, J.P., Mugglin, Rose, Lahtinen and Kane, JJ., concur.

ORDERED that the judgment is affirmed, without costs.

ENTER:

A handwritten signature in black ink, appearing to read "Michael J. Novack". The signature is written in a cursive style with a large, prominent initial "M".

Michael J. Novack
Clerk of the Court