

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

Decided and Entered: February 22, 2007

500465

In the Matter of TODD CHANEY,
Petitioner,

v

MEMORANDUM AND JUDGMENT

DONALD SELSKY, as Director of
Disciplinary Programs,
Respondent.

Calendar Date: December 27, 2006

Before: Cardona, P.J., Crew III, Peters, Mugglin and Kane, JJ.

Todd Chaney, Attica, petitioner pro se.

Andrew M. Cuomo, Attorney General, Albany (Peter H. Schiff
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 a prison
disciplinary rule.

Petitioner was charged in a misbehavior report with
violating several prison disciplinary rules after a law library
clerk retrieved a book from his cell. The book contained a
manilla folder of legal work belonging to another inmate, along
with an unsigned cover letter to that inmate describing the
accompanying documents. After a hearing, petitioner was found
not guilty of two charges but found guilty of providing
unauthorized legal assistance. Following an unsuccessful
administrative appeal, petitioner commenced this proceeding.

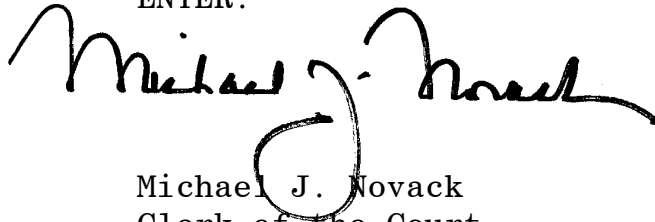
The misbehavior report, documents found in the manilla folder and the testimony of both the correction officer who discovered the documents and the library clerk provide substantial evidence to support the charge (see Matter of Hynes v Goord, 30 AD3d 652, 653 [2006]). Conflicts in the testimony presented credibility issues for the Hearing Officer to resolve (see Matter of Chaney v Selsky, 35 AD3d 1109, 1110 [2006]).

Regarding petitioner's timeliness challenges, the two-week delay in writing the misbehavior report was explained by the author's testimony that he needed to investigate to ensure that this conduct was not included in previous charges against petitioner for providing unauthorized legal assistance (see Matter of Reed v Goord, 16 AD3d 796, 796 [2005]). Although the hearing was not completed within 14 days, we recently stated in a related matter that "the regulatory time limits are directory, not mandatory; further, there is no evidence of any prejudice as a result of the delay" (Matter of Chaney v Selsky, supra at 1110; see Matter of Chaney v Goord, 26 AD3d 605, 606-607 [2006]). In any event, extensions of time were obtained to complete the hearing (see 7 NYCRR 251-5.1 [b]).

Cardona, P.J., Crew III, Peters, Mugglin 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 written in a cursive style with a large, prominent initial "M".

Michael J. Novack
Clerk of the Court