

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

Decided and Entered: September 11, 2008

504376

In the Matter of ALBERT WILSON,
Petitioner,

v

MEMORANDUM AND JUDGMENT

KEITH DUBRAY, as Director of
Special Housing and Inmate
Disciplinary Programs,
Respondent.

Calendar Date: August 4, 2008

Before: Mercure, J.P., Peters, Rose, Malone Jr. and
Kavanagh, JJ.

Albert Wilson, Auburn, petitioner pro se.

Andrew M. Cuomo, Attorney General, Albany (Marcus J.
Mastracco 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.

Petitioner was engaged in a physical altercation with another inmate and, when he ignored a correction officer's directive to stop fighting, the response team had to be called to break up the fight. As a result, petitioner was charged in a misbehavior report with fighting, engaging in violent conduct and

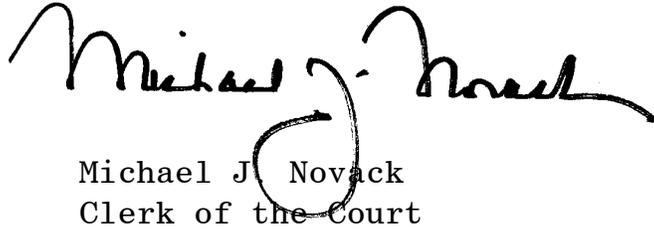
refusing a direct order. He pleaded guilty to refusing a direct order and was found guilty of all charges following a tier III disciplinary hearing. The determination was later affirmed on administrative appeal and this CPLR article 78 proceeding ensued.

We confirm. Initially, inasmuch as petitioner pleaded guilty to refusing a direct order, he is precluded from challenging the evidence supporting the determination in this regard (see Matter of Britt v Goord, 40 AD3d 1321, 1322 [2007]; Matter of Price v Goord, 29 AD3d 1203, 1204 [2006]). Moreover, the misbehavior report, documentary evidence and hearing testimony provide substantial evidence supporting the determination finding petitioner guilty of the remaining charges (see Matter of Green v Goord, 26 AD3d 562, 563 [2006]). Even if petitioner did not initiate the altercation, this does not absolve him of guilt under the circumstances presented (see Matter of Gloster v Goord, 278 AD2d 568, 568 [2000], appeal dismissed 96 NY2d 825 [2001]). Therefore, we find no reason to disturb the determination at hand.

Mercure, J.P., Peters, Rose, Malone Jr. and Kavanagh, JJ., concur.

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

ENTER:



Michael J. Novack
Clerk of the Court