

Supreme Court of the State of New York
Appellate Division: Second Judicial Department

D13631
G/hu

_____AD3d_____

Submitted - December 14, 2006

A. GAIL PRUDENTI, P.J.
WILLIAM F. MASTRO
FRED T. SANTUCCI
MARK C. DILLON, JJ.

2005-01734

DECISION & JUDGMENT

In the Matter of Jose De La Cruz, appellant, v
Donald Selsky, respondent.

(Index No. 5088/04)

Jose De La Cruz, Malone, N.Y., appellant pro se.

Andrew M. Cuomo, Attorney-General, New York, N.Y. (Robert H. Easton and
David Lawrence III, of counsel), for respondent.

Proceeding pursuant to CPLR article 78 to review a determination of the Superintendent of the Fishkill Correctional Facility, dated August 6, 2004, which confirmed a determination of a Hearing Officer dated May 18, 2004, made after a Tier III disciplinary hearing, finding the petitioner guilty of violating prison rules and imposing a penalty.

ADJUDGED that the petition is denied, the determination is confirmed, and the proceeding is dismissed, on the merits, without costs or disbursements.

When reviewing a prison disciplinary determination, the court must decide only whether the determination was supported by substantial evidence (*see Matter of Ramsey v Phillips*, 11 AD3d 470; *Matter of Glover v Goord*, 262 AD2d 483, 484). Here, a review of the record, including the testimony of the witnesses, reveals that there was substantial evidence to support the respondent's determination that the petitioner violated prison rules. The credibility issues were resolved by the Hearing Officer as the trier of fact and we perceive no basis upon which to disturb his determination (*see Matter of Gilzene v McGinnis*, 300 AD2d 658, 659; *Matter of Ramos v Goord*, 286 AD2d 392; *Matter of Rivera v Selsky*, 266 AD2d 295).

January 30, 2007

Page 1.

MATTER OF De La CRUZ v SELSKY

Contrary to the petitioner's contentions, there is no basis upon which to conclude that the Hearing Officer was biased against him. The mere fact that the Hearing Officer ruled against the petitioner does not establish bias (*see Matter of Royster v Goord*, 26 AD3d 503, 505), nor does the fact that the Hearing Officer may have expressed some frustration with the petitioner's insistence upon repeatedly stating the same argument throughout the hearing, despite the Hearing Officer's reassurance that the point was made and understood (*see Matter of Miller v Goord*, 2 AD3d 928, 930; *Matter of Joyce v Goord*, 246 AD2d 926).

The petitioner's remaining contentions are without merit.

PRUDENTI, P.J., MASTRO, SANTUCCI and DILLON, JJ., concur.

ENTER:

A handwritten signature in black ink, reading "James Edward Pelzer". The signature is written in a cursive style with a large, sweeping initial "J".

James Edward Pelzer
Clerk of the Court