

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

D14263
C/hu

_____AD3d_____

Submitted - February 5, 2007

ROBERT A. SPOLZINO, J.P.
PETER B. SKELOS
JOSEPH COVELLO
RUTH C. BALKIN, JJ.

2006-01535

DECISION & JUDGMENT

In the Matter of Carnell Brown, petitioner,
v Donald Selsky, etc., respondent.

(Index No. 4526/05)

Carnell Brown, Moravia, N.Y., petitioner pro se.

Andrew M. Cuomo, Attorney General, New York, N.Y. (Michelle Aronowitz and
Carol Fischer of counsel), for respondent.

Proceeding pursuant to CPLR article 78 to review a determination of the respondent, the Director of Special Housing/Inmate Disciplinary Program of the New York State Department of Correctional Services, dated July 25, 2005, which modified a determination of a Hearing Officer, dated May 9, 2005, made after a Tier III disciplinary hearing, finding the petitioner guilty of violating certain prison disciplinary rules and imposing penalties.

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

Contrary to the petitioner's contention, the misbehavior report, the positive test results for cannabinoids, and the hearing testimony that the petitioner's medication did not cause a false positive result, constituted substantial evidence of guilt (*see Matter of Rincon v Selsky*, 28 AD3d 565, 566; *Matter of Burse v Goord*, 274 AD2d 678, 679; *Matter of McBride v Selsky*, 257 AD2d 930).

March 13, 2007

Page 1.

MATTER OF BROWN v SELSKY

The petitioner's remaining contentions that he was denied access to certain documentary evidence and that the hearing was improperly extended are without merit.

SPOLZINO, J.P., SKELOS, COVELLO and BALKIN, JJ., concur.

ENTER:

A handwritten signature in black ink, reading "James Edward Pelzer". The signature is written in a cursive, flowing style.

James Edward Pelzer
Clerk of the Court