

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

D28565
C/kmg

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Submitted - September 20, 2010

JOSEPH COVELLO, J.P.
JOHN M. LEVENTHAL
L. PRISCILLA HALL
SHERI S. ROMAN, JJ.

2009-08954

DECISION & ORDER

In the Matter of Candido Baez, appellant,
v Norman R. Bezio, etc., respondent.

(Index No. 2045/09)

Candido Baez, Auburn, N.Y., appellant pro se.

Andrew M. Cuomo, Attorney General, New York, N.Y. (Michael S. Belohlavek and
Patrick J. Walsh of counsel), for respondent.

In a proceeding pursuant to CPLR article 78 to review a determination of the respondent, Norman R. Bezio, the Director of Special Housing Unit, New York State Department of Correctional Services, dated February 2, 2009, which confirmed a determination of a hearing officer dated December 22, 2008, made after a Tier III hearing, finding the petitioner guilty of violating prison disciplinary rules and imposing a penalty, the petitioner appeals from a judgment of the Supreme Court, Westchester County (Zambelli, J.), entered August 20, 2009, which denied the petition and dismissed the proceeding.

ORDERED that the judgment is reversed, on the law, without costs or disbursements, the petition is granted, the determination is annulled, the respondent is directed to expunge all references to this matter from the petitioner's institutional record, and the matter is remitted to respondent for further proceedings not inconsistent herewith.

The petitioner was charged by a misbehavior report with violating various prison disciplinary rules. Following a Tier III hearing, the petitioner was found guilty of all of the charges. An administrative appeal affirmed the determination. The petitioner commenced this proceeding

October 12, 2010

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pursuant to CPLR article 78 to review the determination. The Supreme Court denied the petitioner's petition and dismissed the proceeding.

Certain portions of the hearing were not transcribed because they were inaudible. Without those portions of the hearing, this Court is precluded from performing a meaningful review of the hearing (*see Matter of White v Fischer*, 73 AD3d 1372; *Matter of Huston v Bezio*, 69 AD3d 1259; *Matter of La Van v New York State Dept. of Correctional Servs.*, 47 AD3d 1153; *Matter of Douglas v Goord*, 24 AD3d 922; *cf. Matter of Borrero v Goord*, 268 AD2d 853; *Vogelsang v Coombe*, 105 AD2d 913, *affd* 66 NY2d 835). Accordingly, we reverse the judgment, grant the petition, annul the determination, direct the respondent to expunge all references to this matter from the petitioner's institutional record, and remit the matter to the respondent for a new hearing and new determination.

The petitioner's remaining contentions are without merit, cannot be determined on this record, or are academic in light of the foregoing.

COVELLO, J.P., LEVENTHAL, HALL and ROMAN, JJ., concur.

ENTER:


Matthew G. Kiernan
Clerk of the Court