

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

D28636
Y/hu

_____AD3d_____

Submitted - September 28, 2010

STEVEN W. FISHER, J.P.
MARK C. DILLON
ANITA R. FLORIO
PLUMMER E. LOTT, JJ.

2009-04772

DECISION & JUDGMENT

In the Matter of Albert Ramos, petitioner, v Brian
Fischer, etc., respondent.

(Index No. 1215/09)

Albert Ramos, Comstock, N.Y., petitioner pro se.

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

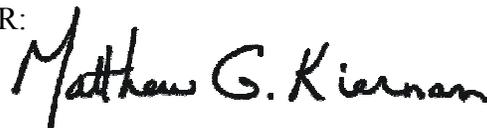
Proceeding pursuant to CPLR article 78 to review a determination of the New York
State Department of Correctional Services dated December 9, 2008, which affirmed a determination
of a hearing officer dated October 29, 2008, made after a Tier III disciplinary hearing, finding the
petitioner guilty of violating a prison disciplinary rule, and imposing a penalty.

ADJUDGED that the petition is granted and the determination is annulled, without
costs or disbursements.

Under the unusual facts of this case, the hearing officer's determination was not
supported by substantial evidence (*cf. Matter of Miller v DeBuono*, 90 NY2d 783, 793).

FISHER, J.P., DILLON, FLORIO and LOTT, JJ., concur.

ENTER:



Matthew G. Kiernan
Clerk of the Court

October 19, 2010

MATTER OF RAMOS v FISCHER