

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

D31819
G/kmb

_____AD3d_____

Submitted - June 3, 2011

WILLIAM F. MASTRO, J.P.
ANITA R. FLORIO
ARIEL E. BELEN
CHERYL E. CHAMBERS, JJ.

2009-11172

DECISION & JUDGMENT

In the Matter of Rasheen Mills, petitioner,
v Brian Fischer, etc., respondent.

(Index No. 6289/09)

Rasheen Mills, Pine City, N.Y., petitioner pro se.

Eric T. Schneiderman, 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 Brian Fischer, as Commissioner of the New York State Department of Correctional Services, dated December 24, 2008, which adopted the recommendation of a hearing officer dated November 18, 2008, made after a Tier III disciplinary hearing, finding the petitioner guilty of the charge of possession of gang related materials.

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

Contrary to the petitioner's contention, the misbehavior report, the hearing testimony, and other documents presented at the hearing provided substantial evidence to support the hearing officer's determination that he was guilty of the charge brought against him (*see Matter of Foster v Coughlin*, 76 NY2d 964, 966; *People ex rel. Vega v Smith*, 66 NY2d 130, 140; *Matter of Reyes v Leclaire*, 49 AD3d 884). Any credibility issues were resolved by the hearing officer, and we find no basis upon which to disturb the hearing officer's determination (*see Matter of Perez v Wilmot*, 67 NY2d 615, 617; *Matter of Armstrong v Phillips*, 44 AD3d 759).

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The petitioner's contention that he was unable to prepare an adequate defense is without merit. The misbehavior report provided sufficient particulars to allow the petitioner to make an effective response to the charge against him and, consequently, he was not denied due process (*see Matter of Lozada v Selsky*, 306 AD2d 413).

MASTRO, J.P., FLORIO, BELEN and CHAMBERS, JJ., concur.

ENTER:


Matthew G. Kiernan
Clerk of the Court