

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

D32439
O/kmb

_____AD3d_____

Submitted - September 16, 2011

PETER B. SKELOS, J.P.
THOMAS A. DICKERSON
JOHN M. LEVENTHAL
PLUMMER E. LOTT, JJ.

2010-09608

DECISION & ORDER

In the Matter of Bradford Applegate, petitioner/plaintiff,
v Phillip D. Heath, etc., respondent/defendant.

(Index No. 216/10)

Bradford Applegate, Elmira, N.Y., petitioner/plaintiff pro se.

Eric T. Schneiderman, Attorney General, New York, N.Y. (Michael S. Belohlavek
and Patrick J. Walsh of counsel), for respondent/defendant.

Hybrid proceeding pursuant to CPLR article 78 to review (1) a determination of the respondent/defendant, Phillip D. Heath, Superintendent of Sing Sing Correctional Facility, dated October 26, 2009, which confirmed a determination of a hearing officer, dated October 12, 2009, made after a Tier II disciplinary hearing, that the petitioner/plaintiff was guilty of violating prison disciplinary rules, and imposed a penalty, and (2) a determination of the New York State Department of Correctional Services Inmate Grievance Program Central Office Review Committee, dated February 10, 2010, which confirmed a determination of the Superintendent of the New York State Department of Correctional Services Inmate Grievance Program, dated November 9, 2009, denying, in part, the petitioner/plaintiff's grievance, and action for a judgment declaring that Directive 4421 (7 NYCRR 721.2[b][1]) is unconstitutional, which was transferred to this Court by order of the Supreme Court, Westchester County (Zambelli, J.), dated September 21, 2010.

ORDERED that the determinations dated October 26, 2009, and February 10, 2010, are confirmed, the petition is denied, without costs or disbursements, and the matter is remitted to the Supreme Court, Westchester County, for further proceedings on the cause of action for a judgment declaring that Directive 4421 (7 NYCRR 721.2[b][1]) is unconstitutional, and the entry

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of an appropriate judgment thereafter, inter alia, dismissing the proceeding.

Contrary to the contention of the petitioner/plaintiff (hereinafter the petitioner), there was substantial evidence supporting the hearing officer's determination that he was guilty of violating prison disciplinary rules (*see Matter of Benson v Brown*, 84 AD3d 794; *Matter of Watson v Fischer*, 82 AD3d 780; *Matter of Mabry v Maddox*, 57 AD3d 1000). We find no basis to disturb the credibility determinations made by the hearing officer (*see Matter of Benson v Brown*, 84 AD3d 794; *Matter of Reyes v Leclair*, 49 AD3d 884).

Additionally, the partial denial of the petitioner's inmate grievance, asserting, inter alia, that his legal mail was improperly treated as general correspondence, was not arbitrary and capricious (*see generally Matter of Davis v Fischer*, 76 AD3d 1152; *Matter of Keesh v Smith*, 59 AD3d 798). The petitioner failed to demonstrate that the mailing bore the identity and official business return address of his attorney (*see* 7 NYCRR 721.2[b][1]).

Since the petition/complaint also requested a declaratory judgment, relief for which a transfer to this Court is not authorized pursuant to CPLR 7804(g) (*see Matter of Coleman v Town of Eastchester*, 70 AD3d 940, 941; *Matter of Huntington Hills Assoc., LLC v Town of Huntington*, 49 AD3d 647, 648; *Matter of Herman v Incorporated Vil. of Tivoli*, 45 AD3d 767, 769), the matter must be remitted to the Supreme Court, Westchester County, for further proceedings on the cause of action seeking such relief, and the entry of an appropriate judgment thereafter, inter alia, dismissing the proceeding.

SKELOS, J.P., DICKERSON, LEVENTHAL and LOTT, JJ., concur.

ENTER:


Matthew G. Kiernan
Clerk of the Court