

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

D34822
G/nl

_____AD3d_____

Submitted - February 24, 2012

WILLIAM F. MASTRO, A.P.J.
L. PRISCILLA HALL
PLUMMER E. LOTT
SANDRA L. SGROI, JJ.

2010-08088

DECISION & JUDGMENT

In the Matter of Cedric Turner, petitioner, v Brian
Fischer, etc., respondent.

(Index No. 2002/10)

Cedric Turner, Malone, N.Y., appellant pro se.

Eric T. Schneiderman, New York, N.Y. (Michael S. Belohlavek and Ann P. Zybert
of counsel), for respondent.

Proceeding pursuant to CPLR article 78 to review a determination of Norman R. Bezio, Director of Special Housing/Inmate Disciplinary Program, on behalf of Brian Fischer, as Commissioner of the New York State Department of Correctional Services, dated January 15, 2010, which affirmed a determination of a hearing officer dated November 12, 2009, made after a Tier III disciplinary hearing, finding that the petitioner violated prison rule 113.10 (7 NYCRR 270.2[b][14][i]) by possessing contraband classified as a weapon, and imposing a penalty.

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

The possibility that “the weapon [in question] could have been placed in the [petitioner’s cell] door track by another inmate” (*Matter of Jimenez v Fischer*, 87 AD3d 771, 771) did not negate the existence of substantial evidence to support the determination that the petitioner violated prison rule 113.10 (7 NYCRR 270.2[b][14][I]) by possessing contraband classified as a weapon (*id.*; see *Matter of Daughtry v Bezio*, 84 AD3d 1623; *Matter of McEwen v Goord*, 32 AD3d

1116; *Matter of Hammond v Selsky*, 28 AD3d 1000; *Matter of Shackelford v Goord*, 3 AD3d 622; *Matter of Nieves v Goord*, 2 AD3d 1173; *cf. Matter of Price v Phillips*, 4 AD3d 364).

The petitioner's remaining contentions are without merit.

MASTRO, A.P.J., HALL, LOTT and SGROI, JJ., concur.

ENTER:


Aprilanne Agostino
Clerk of the Court