

SUPREME COURT OF THE STATE OF NEW YORK
Appellate Division, Fourth Judicial Department

473

TP 15-01708

PRESENT: PERADOTTO, J.P., CARNI, LINDLEY, CURRAN, AND TROUTMAN, JJ.

IN THE MATTER OF NICHOLAS CASTIGLIA, PETITIONER,

V

MEMORANDUM AND ORDER

COUNTY OF ONTARIO AND PHILLIP POVERO, SHERIFF OF
ONTARIO COUNTY, RESPONDENTS.

TREVETT CRISTO SALZER & ANDOLINA, P.C., ROCHESTER (MATTHEW J. FUSCO OF
COUNSEL), FOR PETITIONER.

GARY L. CURTISS, COUNTY ATTORNEY, CANANDAIGUA (LEA T. NACCA OF
COUNSEL), FOR RESPONDENTS.

Proceeding pursuant to CPLR article 78 (transferred to the Appellate Division of the Supreme Court in the Fourth Judicial Department by order of the Supreme Court, Ontario County [Thomas A. Stander, J.], entered October 2, 2015) to annul a determination of respondents. The determination terminated the employment of petitioner.

It is hereby ORDERED that the determination is unanimously confirmed without costs and the petition is dismissed.

Memorandum: Petitioner commenced this proceeding seeking to annul the determination finding him guilty of disciplinary charges and terminating his employment as a correction officer for respondents. We conclude that the determination is supported by substantial evidence, i.e., "such relevant proof as a reasonable mind may accept as adequate to support a conclusion or ultimate fact" (*300 Gramatan Ave. Assoc. v State Div. of Human Rights*, 45 NY2d 176, 180; see CPLR 7803 [4]; see generally *Matter of Pell v Board of Educ. of Union Free Sch. Dist. No. 1 of Towns of Scarsdale & Mamaroneck, Westchester County*, 34 NY2d 222, 230-231). We further conclude that, in view of petitioner's extensive disciplinary record, the penalty of terminating his employment is not "so disproportionate to the offense[s] as to be shocking to one's sense of fairness," and thus it does not constitute an abuse of discretion as a matter of law (*Matter of Kelly v Safir*, 96 NY2d 32, 38, rearg denied 96 NY2d 854; see *Matter of Seltzer v City of Rochester*, 77 AD3d 1300, 1301).

Entered: June 10, 2016

Frances E. Cafarell
Clerk of the Court