

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

1360

TP 17-00887

PRESENT: WHALEN, P.J., CENTRA, DEJOSEPH, NEMOYER, AND WINSLOW, JJ.

IN THE MATTER OF BASHAN RUDOLPH, PETITIONER,

V

MEMORANDUM AND ORDER

ANTHONY ANNUCCI, ACTING COMMISSIONER, NEW YORK
STATE DEPARTMENT OF CORRECTIONS AND COMMUNITY
SUPERVISION, RESPONDENT.

WYOMING COUNTY-ATTICA LEGAL AID BUREAU, WARSAW (ADAM W. KOCH OF
COUNSEL), FOR PETITIONER.

ERIC T. SCHNEIDERMAN, ATTORNEY GENERAL, ALBANY (VICTOR PALADINO OF
COUNSEL), FOR RESPONDENT.

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, Wyoming County [Michael M. Mohun, A.J.], entered May 15, 2017) to annul a determination of respondent. The determination found after a tier III hearing that petitioner had violated various inmate rules.

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

Memorandum: Petitioner commenced this CPLR article 78 proceeding seeking to annul the determination, following a tier III disciplinary hearing, that he violated inmate rules 106.10 (7 NYCRR 270.2 [B] [7] [i] [refusal to obey direct order]) and 113.10 (7 NYCRR 270.2 [B] [14] [i] [weapon possession]). Contrary to petitioner's contention, the determination is supported by substantial evidence, including the misbehavior report and the testimony of the correction officer who wrote it (*see Matter of Medina v Fischer*, 137 AD3d 1584, 1585 [4th Dept 2016]; *Matter of Spears v Fischer*, 103 AD3d 1135, 1135-1136 [4th Dept 2013]; *see generally People ex rel. Vega v Smith*, 66 NY2d 130, 139-140 [1985]), notwithstanding that the videotape of the incident is inconclusive in certain respects (*see generally Matter of Hutchinson v Annucci*, 149 AD3d 1443, 1443 [3d Dept 2017]). The testimony of petitioner and the other inmates who testified at the hearing merely raised credibility issues that the Hearing Officer was entitled to resolve against petitioner (*see Matter of Foster v Coughlin*, 76 NY2d 964, 966 [1990]; *Matter of Heath v Walker*, 255 AD2d 1006, 1006 [4th Dept 1998]), as did the alleged inconsistencies in the testimony of the correction officer who witnessed the incident (*see Matter of Headley v Annucci*, 150 AD3d 1513, 1514 [3d Dept 2017]; *see also Matter*

of Griffin v Goord, 266 AD2d 830, 830 [4th Dept 1999]).

Entered: December 22, 2017

Mark W. Bennett
Clerk of the Court