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

1355

TP 17-01995

PRESENT: PERADOTTO, J.P., LINDLEY, DEJOSEPH, NEMOYER, AND CURRAN, JJ.

IN THE MATTER OF ANTHONY MEDINA, PETITIONER,

V MEMORANDUM AND ORDER

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

ANTHONY MEDINA, PETITIONER PRO SE.

BARBARA D. UNDERWOOD, 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, Erie County [Russell P. Buscaglia, A.J.], entered November 14, 2017) to review two determinations of respondent. The determinations found after separate tier III hearings that petitioner had violated various inmate rules.

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

Memorandum: Petitioner commenced this CPLR article 78 proceeding seeking to annul the determinations, following two separate tier III disciplinary hearings, that he violated certain inmate rules alleged in two misbehavior reports. Specifically, with respect to the first misbehavior report, petitioner was determined to have violated inmate rules 106.10 (7 NYCRR 270.2 [B] [7] [i] [refusing direct order]), 104.13 (7 NYCRR 270.2 [B] [5] [iv] [creating a disturbance]), 107.20 (7 NYCRR 270.2 [B] [8] [iii] [false statements or information]), and 109.12 (7 NYCRR 270.2 [B] [10] [iii] [movement regulation violation]). With respect to the second misbehavior report, petitioner was determined to have violated inmate rules 106.10 (7 NYCRR 270.2 [B] [7] [i] [refusing direct order]) and 104.13 (7 NYCRR 270.2 [B] [5] [iv] [creating a disturbance]).

Contrary to petitioner's contention, the misbehavior reports constitute substantial evidence supporting the determinations that he violated the subject inmate rules (*see Matter of Perez v Wilmot*, 67 NY2d 615, 616-617 [1986]; *Matter of McMillian v Lempke*, 149 AD3d 1492, 1493 [4th Dept 2017], *appeal dismissed* 30 NY3d 930 [2017]). Petitioner's claims that he did nothing wrong and that the misbehavior reports were written in retaliation for prior litigation that he had

brought merely created credibility issues for the Hearing Officer to resolve (*see Matter of Foster v Coughlin*, 76 NY2d 964, 966 [1990]). Furthermore, the record does not establish " 'that the Hearing Officer was biased or that the determination[s] flowed from the alleged bias' " (*Matter of Colon v Fischer*, 83 AD3d 1500, 1501 [4th Dept 2011]). "The mere fact that the Hearing Officer ruled against . . . petitioner is insufficient to establish bias" (*Matter of Edwards v Fischer*, 87 AD3d 1328, 1329 [4th Dept 2011] [internal quotation marks omitted]).

We have considered petitioner's remaining contentions and conclude that they do not require a different result.

Entered: December 21, 2018

Mark W. Bennett
Clerk of the Court