

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

910

TP 16-00103

PRESENT: PERADOTTO, J.P., LINDLEY, NEMOYER, AND SCUDDER, JJ.

IN THE MATTER OF SAMUEL WALTON, PETITIONER,

V

MEMORANDUM AND ORDER

JOHN COLVIN, SUPERINTENDENT, FIVE POINTS
CORRECTIONAL FACILITY AND ANTHONY ANNUCCI,
ACTING COMMISSIONER, NEW YORK STATE DEPARTMENT
OF CORRECTIONS AND COMMUNITY SUPERVISION,
RESPONDENTS.

SAMUEL WALTON, PETITIONER PRO SE.

ERIC T. SCHNEIDERMAN, ATTORNEY GENERAL, ALBANY (MARCUS J. MASTRACCO 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, Seneca County [Dennis F. Bender, A.J.], entered January 19, 2016) to review a determination finding after a tier II hearing that petitioner had violated two 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 II disciplinary hearing, that he violated two inmate rules. We reject petitioner's contention that the determination is not supported by substantial evidence. Specifically, the misbehavior report, together with the videotape of the incident and the hearing testimony of the correction officer who prepared the misbehavior report, "constitutes substantial evidence supporting the determination that petitioner violated [the] inmate rule[s]" at issue (*Matter of Oliver v Fischer*, 82 AD3d 1648, 1648). Petitioner's denials of the reported misbehavior presented only an issue of credibility for resolution by the Hearing Officer (*see Matter of Foster v Coughlin*, 76 NY2d 964, 966).

Entered: November 10, 2016

Frances E. Cafarell
Clerk of the Court