

**SUPREME COURT OF THE STATE OF NEW YORK, APPELLATE DIVISION,  
THIRD DEPARTMENT**

**Matter of Arriaga v. Smith**

70 A.D.3d 1160 (N.Y. App. Div. 3d Dep't 2010) · Decided February 11, 2010

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**SUMMARY**

The court reviewed a CPLR article 78 proceeding challenging a prison disciplinary determination finding the petitioner guilty of theft of state property and smuggling. It held that the misbehavior report and hearing testimony constituted substantial evidence, rejected the petitioner's notice, credibility, and hearing-officer-bias claims, and confirmed the determination.

**OPINION**

**PER CURIAM.**

Proceeding pursuant to CPLR article 78 (transferred to this Court by order of the Supreme Court, entered in Ulster County) to review a determination of respondent Superintendent of Shawangunk Correctional Facility which found petitioner guilty of violating certain prison disciplinary rules. Petitioner was charged in a misbehavior report with theft of state property and smuggling after a search of his personal bag as he left the facility kitchen uncovered over two pounds of sliced turkey and nine slices of bread.

Following a tier II disciplinary hearing, petitioner was found guilty of both charges. The determination was affirmed on administrative appeal and this CPLR article 78 proceeding ensued. We confirm. To the extent that petitioner challenges the evidentiary basis of the determination, we conclude that the misbehavior report, together with the hearing testimony of its author, provide substantial evidence supporting the determination of guilt (see *Matter of Roye v Goord*, 34 AD3d 1134 [2006]).

Further, the misbehavior report was sufficient to apprise petitioner of the charges against him and he has demonstrated no prejudice in preparing a defense from any alleged errors in the report regarding the location of the search or the date of service (see *Matter of Linares v Fischer*, 59 AD3d 761 [2009], lv denied 12 NY3d 709 [2009]). Petitioner's contention that the bag containing the food did not belong to him presented a credibility issue for the Hearing Officer to resolve (see *Matter of Cruz v Fischer*, 57 AD3d 1055 [2008]).

Finally, we find no support in the record for petitioner's claim that the Hearing Officer was biased or that the determination flowed from any bias (see *Matter of Warren v Fischer*, 63 AD3d 1466, 1467 [2009]). We have examined petitioner's remaining contentions and, to the extent preserved,

find them to be unavailing. \*1161Peters, J.P., Rose, Lahtinen, Kavanagh and McCarthy, JJ., concur.

Adjudged that the determination is confirmed, without costs, and petition dismissed.

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