

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

Applegate v. Heath

88 A.D.3d 699 (N.Y. App. Div. 2d Dep't 2011) · Decided October 4, 2011

SUMMARY

The court held that substantial evidence supported the determination that the petitioner violated prison disciplinary rules and found no basis to disturb the hearing officer's credibility determinations. It also upheld the partial denial of the petitioner's grievance concerning legal mail, but remitted the matter to the Supreme Court for further proceedings because the petition sought declaratory relief that could not be transferred under CPLR 7804(g).

OPINION

PER CURIAM.

*700Contrary to the contention of the petitioner/plaintiff (hereinafter the petitioner), there was substantial evidence supporting the hearing officer's determination that he was guilty of violating prison disciplinary rules (see *Matter of Benson v Brown*, 84 AD3d 794 [2011]; *Matter of Watson v Fischer*, 82 AD3d 780 [2011]; *Matter of Mabry v Maddox*, 57 AD3d 1000 [2008]).

We find no basis to disturb the credibility determinations made by the hearing officer (see *Matter of Benson v Brown*, 84 AD3d 794 [2011]; *Matter of Reyes v Leclaire*, 49 AD3d 884 [2008]). Additionally, the partial denial of the petitioner's inmate grievance, asserting, inter alia, that his legal mail was improperly treated as general correspondence, was not arbitrary and capricious (see generally *Matter of Davis v Fischer*, 76 AD3d 1152 [2010]; *Matter of Keesh v Smith*, 59 AD3d 798 [2009]).

The petitioner failed to demonstrate that the mailing bore the identity and official business return address of his attorney (see 7 NYCRR 721.2 [b] [1]). Since the petition/complaint also requested a declaratory judgment, relief for which a transfer to this Court is not authorized pursuant to CPLR 7804 (g) (see *Matter of Coleman v Town of Eastchester*, 70 AD3d 940, 941 [2010]; *Matter of Huntington Hills Assoc., LLC v Town of Huntington*, 49 AD3d 647, 648 [2008]; *Matter of Herman v Incorporated Vil. of Tivoli*, 45 AD3d 767, 769 [2007]), the matter must be remitted to the Supreme Court, Westchester County, for further proceedings on the cause of action seeking such relief, and the entry of an appropriate judgment thereafter, inter alia, dismissing the proceeding.

Skelos, J.E, Dickerson, Leventhal and Lott, JJ., concur.

Retrieved from lawtools.ai · <https://lawtools.ai/cases/state/new-york-supreme-court-of-the-state-of-new-york-appellate-division-second-department/2011/applegate-v-heath-a2a06s9s>