

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

Stewart v. McArdle

149 A.D.3d 1452 (3d Dep't 2017) · Decided April 27, 2017

SUMMARY

The court reviewed a prison disciplinary determination under CPLR article 78 after the petitioner was found guilty of violating facility correspondence procedures. It held that the misbehavior report, envelope and card, order of protection, and hearing testimony provided substantial evidence supporting the determination, and dismissed the petition.

OPINION

PER CURIAM.

Proceeding pursuant to CPLR article 78 (transferred to this Court by order of the Supreme Court, entered in Albany County) to review a determination of respondent finding petitioner guilty of violating a prison disciplinary rule.

After an envelope addressed to petitioner's mother was discovered to contain a card addressed to his children who were the subject of an order of protection, petitioner was charged in a misbehavior report with violating facility correspondence procedures. Following a tier II disciplinary hearing, petitioner was found guilty of the charge and that determination was affirmed upon administrative appeal.

This CPLR article 78 proceeding ensued. We confirm. The misbehavior report, the envelope that petitioner addressed to his mother containing the card addressed to his children, the order of protection and petitioner's testimony at the hearing provide substantial evidence to support the determination that petitioner violated correspondence procedures (see *Matter of Cortorreal v Goord*, 41 AD3d 1048, 1048 [2007]; *Matter of Goldberg v Goord*, 11 AD3d 841, 841 [2004]).

Petitioner's denial of any misconduct, claiming that he sent the children's card to his mother so that she could hold it until such time as it was legally permissible to give to the chil*1453dren, presented a credibility issue for the Hearing Officer to resolve (see *Matter of Cole v New York State Dept. of Correctional Servs.*, 87 AD3d 1243, 1243 [2011]). McCarthy, J.P., Garry, Egan Jr., Devine and Aarons, JJ., concur.

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

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