

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

Dubois v. Bezio

67 A.D.3d 1111 (N.Y. App. Div. 3d Dep't 2009) · Decided November 5, 2009

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 the Commissioner of Correctional Services which found petitioner guilty of violating certain prison disciplinary rules. During a search of petitioner's cell, correction officials recovered 40 individual packets of a brownish substance that tested positive for heroin secreted in bags of rice located under petitioner's bed.

As a result, petitioner was charged in a misbehavior report with possessing a narcotic drug as well as contraband. Following a tier III disciplinary hearing, petitioner was found guilty of the charges. The determination was later affirmed on administrative appeal with a modified penalty and this CPLR article 78 proceeding ensued.

We confirm. The misbehavior report, testimony of the correction officer who authored it and documentary evidence provide substantial evidence supporting the determination of guilt (see *Matter of Dozier v Selsky*, 54 AD3d 1074, 1075 [2008]; *Matter of Diaz v Goord*, 26 AD3d 561, 562 [2006]). There is no merit to petitioner's claim that the assigned Hearing Officer should not have presided over the hearing.

Although the Hearing Officer knew about the search, there is no evidence establishing either that he witnessed the incident or that he investigated the same (see *Matter of Sime v Goord*, 30 AD3d 887, 888 [2006], lv denied 7 NY3d 717 [2006]). Petitioner's remaining contentions have either not been preserved for our review or are lacking in merit. Cardona, P.J., Rose, Lahtinen, McCarthy and Garry, JJ., concur.

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