

**APPELLATE DIVISION OF THE SUPREME COURT OF THE STATE OF NEW
YORK**

Scivolette v. Prack

102 A.D.3d 1024 (N.Y. App. Div. 2013) · Decided January 17, 2013

SUMMARY

The New York appellate court upheld a prison disciplinary determination finding the petitioner guilty of conspiring to smuggle and possess drugs, drug use, and a facility correspondence violation. The court concluded that the misbehavior report, confidential testimony, hearing testimony, and documentary evidence provided substantial evidence, and that the report was sufficiently detailed to permit the petitioner to defend himself.

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 Corrections and Community Supervision which found petitioner guilty of violating certain prison disciplinary rules. Following an investigation, petitioner was charged in a misbehavior report with conspiring to smuggle and possess drugs, drug use and a facility correspondence violation.

Petitioner pleaded guilty to violating facility correspondence rules and, after a tier III disciplinary hearing, was found guilty of the remaining charges. The determination was upheld upon administrative appeal, and this CPLR article 78 proceeding ensued.

We confirm. The misbehavior report, hearing testimony, confidential testimony and documentary evidence provide substantial evidence to support the determination of guilt (see *Matter of Cognata v Fischer*, 85 AD3d 1456, 1457 [2011]; *Matter of Smart v New York State Dept. of Correctional Servs.*, 75 AD3d 1017, 1017-1018 [2010]). Contrary to petitioner's claim, the misbehavior report was prepared as part of an ongoing investigation and was sufficiently detailed to permit him to defend himself (see *Matter of Cognata v Fischer*, 85 AD3d at 1457; *Matter of Smart v New York State Dept. of Correctional Servs.*, 75 AD3d at 1018).

Petitioner's remaining contentions, to the extent they are properly before us, have been examined and found to lack merit. Peters, P.J., Mercure, Lahtinen, McCarthy and Egan Jr., JJ., concur. Adjudged that the determination is confirmed, without costs, and petition dismissed.

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