

**Supreme Court of the State of New York**  
**Appellate Division: Second Judicial Department**

D23476  
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Submitted - April 14, 2009

WILLIAM F. MASTRO, J.P.  
HOWARD MILLER  
CHERYL E. CHAMBERS  
LEONARD B. AUSTIN, JJ.

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2008-00243

DECISION & JUDGMENT

In the Matter of Marcelino Garcia, appellant,  
v Brian S. Fischer, etc., respondent.

(Index No. 2298/07)

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Marcelino Garcia, Auburn, N.Y., appellant pro se.

Andrew M. Cuomo, Attorney General, New York, N.Y. (Michael S. Belohlavek and  
Ann P. Zybert of counsel), for respondent.

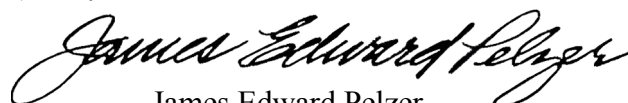
Proceeding pursuant to CPLR article 78 to review a determination of the Director of the Special Housing/Inmate Disciplinary Program of the New York State Department of Correctional Services dated March 23, 2007, which confirmed a determination of a Hearing Officer dated December 15, 2006, made after a Tier III disciplinary hearing, finding that the petitioner violated institutional rules prohibiting assault on an inmate and possession of a weapon, and imposing penalties.

ADJUDGED that the determination is confirmed and the proceeding is dismissed on the merits, without costs or disbursements.

The determination is supported by substantial evidence (*see People ex rel. Vega v Smith*, 66 NY2d 130, 139). The petitioner's remaining contentions are without merit (*see Matter of Couch v Goord*, 255 AD2d 720, 722; *Matter of Bryant v Coughlin*, 77 NY2d 642, 650; *Matter of Samuel v Fischer*, 53 AD3d 960; *Matter of Adorno v Goord*, 35 AD3d 930).

MASTRO, J.P., MILLER, CHAMBERS and AUSTIN, JJ., concur.

ENTER:



James Edward Pelzer  
Clerk of the Court

June 9, 2009

MATTER OF GARCIA v FISCHER