

DISCIPLINE HEARING OFFICER REPORT

U.S. DEPARTMENT OF JUSTICE

FEDERAL BUREAU PRISONS

Institution: MCC New York, New York	Incident Report number: 3281411
NAME OF INMATE: Tartaglione, Nicolas	REG. NO.: 78514-054 UNIT: 5 Unit Team
Date of Incident Report: June 26, 2019	Offense Code: 108

Date of Incident: June 26, 2019

Summary of Charges: Possession of a Hazardous Tool

I. NOTICE OF CHARGE(S)

A. Advanced written notice of charge (copy of Incident Report) was given to inmate on (date) 07-20-2019 at (time) 2:00 p.m. (by staff member) [REDACTED], Lieutenant

B. The DHO Hearing was held on (date) 08-01-2019 at (time) 9:21 a.m.

C. The inmate was advised of the rights before the DHO by (staff member):

S. [REDACTED], Correctional Counselor on (date) 07-23-2019 and a copy of the advisement of rights form is attached.

II. STAFF REPRESENTATIVE

A. Inmate waived right to staff representative. Yes X No .

B. Inmate requested staff representative and N/A appeared.

C. Staff Representative statement: N/A

D. Requested staff representative declined or could not appear but inmate was advised of option to postpone hearing to obtain another staff representative with the result that: (New Staff Representative Name) N/A was selected.

E. Staff representative N/A was appointed.

III. PRESENTATION OF EVIDENCE

A. Inmate X (admits) (denies) (Neither) the charge(s).

B. Summary of inmate statement:

Inmate Tartaglione, Nicolas Register No.: 78514-054 stated he was issued a copy of the incident report. He did not request a staff representative, nor did he request witnesses provide testimony on his behalf during his hearing. He did not submit any documentary evidence for review by the DHO. He stated he understood his rights before the DHO and he was ready to proceed with his DHO hearing.

Inmate Tartaglione, Nicolas Register No.: 78514-054 stated the incident report was true.

"Yes that is true, that was my Cellphone. I used the Cellphone; I take responsibility for my actions. I am guilty."

C. Witnesses:

1. The inmate requested witnesses. Yes No X.

2. The following persons were called as witness at this hearing and appeared: N/A

3. A summary of the testimony of each witness is attached N/A.

4. The following persons requested were not called for the reason(s) given: N/A.

5. Unavailable witnesses were requested to submit written statements and those statements received were considered N/A.

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D. Documentary Evidence: In addition to the Incident Report and Investigation, the DHO considered the following documents:

Photograph depicting the black cellphone found in possession of inmate Tartaglione, Nicolas Register No.: 78514-054 during a search by the reporting staff member, on June 26, 2019, at approximately 3:15 p.m., in his assigned living area (cell 516), in the MCC New York Inmate Housing Unit, during a search by the reporting staff member.

E. Confidential information was used by DHO in support of his findings, but was not revealed to the inmate. The confidential information was documented in a separate report. The confidential information has been (confidential informants have been) determined to be reliable because: N/A.

IV. FINDINGS OF THE DHO

- A. The act was committed as charged.
- B. The following act was committed:
- C. No prohibited act was committed: Expunge according to Inmate Discipline PS.

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V. SPECIFIC EVIDENCE RELIED ON TO SUPPORT FINDINGS (Physical evidence, observations, written documents, etc.):

***Administrative Note; The DHO notes the incident report (#3281411) was suspended on June 26, 2019, pending AUSA referral. On July 19, 2019, the SIS Department released the incident report for administrative processing, due to being declined for prosecution by the AUSA/FBI. On July 20, 2019, at 2:00 p.m., inmate Tartaglione, Nicolas Register Number.: 78514-054; was issued a copy of this incident report, the incident report was investigated and referred to the UDC review. The UDC review was conducted on July 23, 2019, and referred to the DHO for final disposition. All in accordance with the guidelines of P.S. 5270.09, in reference to Timelines, and Delays in reference to processing an incident report referred for Criminal Prosecution consideration/review and amending to make corrections. There was no evidence that this delay in any way hindered inmate Tartaglione's ability to defend himself against the charges.

Your due process rights were read, and reviewed with you by the DHO, at the time of your hearing. You stated you understood your rights, and had no documentary evidence to present. You did not request the services of a staff representative. You did not request any witnesses provide testimony on your behalf.

Based on some facts/evidence the DHO concluded the prohibited act of Possession of a Hazardous Tool (Cellphone) was committed. The DHO based his decision on the following evidence:

The DHO based this finding upon the reporting officer's written statement; "On June 26, 2019 at approximately 3:15 p.m., while walking to Tier 2 Cell 516 in unit 5 North I observed inmate Tartaglione 78514-054 conceal what appeared to be a small black object with battery attachment in his sweat pants. I then gave Inmate Tartaglione a direct order to place his hands on the wall so I can conduct a pat search. While conducting the pat down search on inmate Tartaglione a black phone fell from his shorts. I then ordered inmate Tartaglione to leave the tier. Inmate Tartaglione was escorted to the sally port, placed in restraints then escorted to special housing unit. Operations Lieutenant was notified with no further incident"

In addition, the DHO considered your testimony during the DHO hearing, in which you admit the incident report was true. You stated, "I am guilty the cellphone was mine." You admit guilt of possessing the Black Samsung cellphone on your person during a pat search by the reporting staff member, as described in section 11 of the incident report.

In addition, the DHO considered the photograph depicting the black cellphone found in possession of inmate Tartaglione, Nicolas Register No.: 78514-054 during a search by the reporting staff member, on June 26, 2019, at approximately 3:15 p.m., in his assigned living area (cell 516), in the MCC New York 5 North Inmate Housing Unit, during a search by the reporting staff member. Clearly this information/evidence corroborates the fact you were indeed found in possession of an unauthorized Cell Phone, as described in the section 11 narrative of the incident report.

NOTE: To possess means to have on one's person/under one's dominion or control of hard contraband identified.

Based on the evidence submitted in reference to this incident report, your reported actions met the threshold for possession of cell phone as described above. Based on some facts/evidence, the DHO found you committed the prohibited act of Possession of hazardous tool (Cell Phone), code 108.

VI. SANCTION OR ACTION TAKEN:	Offense Severity	108
	SGT Available	N/A

Code 108:
 Disallowance Good Conduct Time: 41 Days
 Disciplinary Segregation: 60 Days
 Loss of Privileges=Visit: 365 Days

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VII. REASON FOR SANCTION OR ACTION TAKEN:

The action/behavior on the part of Possession of a Hazardous Tool (Cellphone) significantly threatens the health, safety, and welfare of not only himself, but of all persons, whether another inmate or any other person, who are involved in the act. This will not be tolerated. Past evidence has shown that disruptive conduct has led to serious damage to the institution, as well as serious injury to staff and inmates involved and not involved in the disruptive conduct. The sanctions imposed by the DHO were taken to inform the inmate that he will be held responsible for his actions/behaviors at all times.

The sanction involving Disciplinary Segregation was taken to deter any further negative behavior, and to enforce the standard of inmates being held responsible for their actions.

The sanctions imposed involving Disallowance of Good Conduct Time and Loss Privileges=Visit, and Monetary fine were also taken to enforce the standard of inmates being held responsible for their actions. It is believed, and past evidence has supported that this type of behavior can be disruptive to the Security or Orderly Running of a BOP Facility and cannot be tolerated.

The DHO considered your continued disruptive behavior, also your willingness to accept FULL responsibility for your actions, and the seriousness of this particular prohibited act infraction. The fact there is a zero tolerance for inmates to utilize or possess any types of hazardous tools or accessories (cellphones) in a Correctional Setting, when determining your slightly progressive sanctions for this prohibited act.

You should be aware, any future disruptive behavior, will be cause for the DHO to consider more significant progressive disciplinary sanctions, in accordance with P.S. 5270.09, Page 55, in an effort to convince you this type of behavior is not acceptable, and it is imperative to abide by all institutional rules, and regulations. This type of behavior will ABSOLUTELY not be tolerated.

The DHO expects these sanctions will serve to deter you from similar misconduct in the future and convince you to abide by all institution rules and regulations.

VIII. APPEAL RIGHTS: X The inmate has been advised of the findings, specific evidence relied on, action and reasons for the action. The inmate has been advised of his right to appeal this action within 20 calendar days under the Administrative Remedy Procedure. A copy of this report has been given to the inmate.

IX. Discipline Hearing Officer

Printed Name	Signature	Date
K. [REDACTED], DHO	[REDACTED]	August 1, 2019

DHO report delivered to Inmate by: _____
Signature

Printed Name (Staff) _____
Date and Time: _____