

State of New York
Supreme Court, Appellate Division
Third Judicial Department

Decided and Entered: July 12, 2012

512085

In the Matter of RUDY STARK,
Petitioner,

v

MEMORANDUM AND JUDGMENT

NORMAN BEZIO, as Director of
Special Housing and Inmate
Disciplinary Programs,
Respondent.

Calendar Date: May 9, 2012

Before: Peters, P.J., Lahtinen, Malone Jr., Stein and Garry, JJ.

Rudy Stark, Malone, petitioner pro se.

Eric T. Schneiderman, Attorney General, Albany (Marcus J. Mastracco of counsel), for respondent.

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.

During a visit with his wife, petitioner was observed engaged in an unauthorized exchange of property and subsequently charged in a misbehavior report with smuggling, possessing an item in an unauthorized area, possessing an altered item and failing to comply with frisk procedures. Following the visit, an investigation resulted in a second misbehavior report charging petitioner with smuggling and conspiring to introduce drugs into the correctional facility. A tier III disciplinary hearing for both misbehavior reports was held where the smuggling charge

contained in the second report was dismissed and petitioner was found guilty of all remaining charges.¹

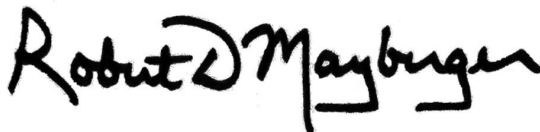
On appeal, petitioner argues that the Hearing Officer's determination finding him guilty of conspiring to introduce drugs into the facility is not supported by substantial evidence. To the contrary, we find that the second misbehavior report and related documentation, including the confidential information considered by the Hearing Officer in camera, as well as the testimony adduced at the hearing, provide the necessary supporting substantial evidence (see Matter of Alvarado v Commissioner of Special Housing Unit, 93 AD3d 966, 967 [2012]).

We have considered petitioner's remaining contentions and find them either unpreserved or lacking in merit.

Peters, P.J., Lahtinen, Malone Jr., Stein and Garry, JJ., concur.

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

ENTER:

A handwritten signature in black ink that reads "Robert D. Mayberger". The signature is written in a cursive, slightly slanted style.

Robert D. Mayberger
Clerk of the Court

¹ Petitioner concedes that he pleaded guilty to the charges contained in the first misbehavior report and does not challenge that part of the determination (see Matter of Cooper v Fischer, 89 AD3d 1336, 1336 [2011]).