

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

Decided and Entered: July 5, 2012

512808

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In the Matter of RACHINE GETER,  
Petitioner,

v

MEMORANDUM AND JUDGMENT

BRIAN FISCHER, as Commissioner  
of Corrections and Community  
Supervision,  
Respondent.

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Calendar Date: May 9, 2012

Before: Rose, J.P., Spain, Malone Jr., Stein and Egan Jr., JJ.

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Rachine Geter, Elmira, petitioner pro se.

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

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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 respondent which found petitioner guilty of violating a prison disciplinary rule.

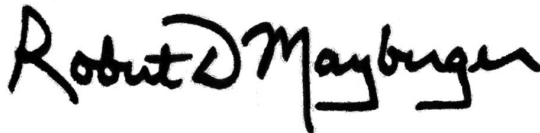
The misbehavior report and testimony from the authoring correction officer, which relate that petitioner admitted during an interview that he had used marihuana in the past few months, together with petitioner's testimony, provide substantial evidence to support the determination finding petitioner guilty of violating the prison disciplinary rule that prohibits drug possession (see Matter of Moore v Fischer, 63 AD3d 1401 [2009]). Any conflict in the testimony presented a credibility issue for the Hearing Officer to resolve (see Matter of Spencer v Fischer, 89 AD3d 1354, 1355 [2011]; Matter of Hall v Selsky, 52 AD3d 1078

[2008]). Furthermore, we are unpersuaded by petitioner's contention that the misbehavior report did not provide adequate notice of the charge. The misbehavior report clearly indicates that petitioner was being charged with violating rule 113.25, which specifically prohibits the possession of drugs (see 7 NYCRR 270.2 [B] [14] [xv]).

Rose, J.P., Spain, Malone Jr., Stein and Egan Jr., 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