

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

Decided and Entered: August 2, 2012

513091

In the Matter of BORN ALLAH
WRIGHT,
Petitioner,

v

MEMORANDUM AND JUDGMENT

BRIAN FISCHER, as Commissioner
of Corrections and Community
Supervision, et al.,
Respondents.

Calendar Date: June 6, 2012

Before: Mercure, J.P., Lahtinen, Malone Jr., McCarthy and
Egan Jr., JJ.

Born Allah Wright, Attica, petitioner pro se.

Eric T. Schneiderman, Attorney General, Albany (Peter H.
Schiff of counsel), for respondents.

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 Commissioner of Corrections and Community Supervision which found petitioner guilty of violating certain prison disciplinary rules.

Following his transfer to a different cell block, petitioner asked a correction officer about the shower schedule. After being informed that he would have to inquire with different staff members, petitioner became agitated and struck the officer in the chest. A physical altercation ensued. Petitioner was charged in a misbehavior report with assaulting staff, engaging in violent conduct and creating a disturbance. He was found

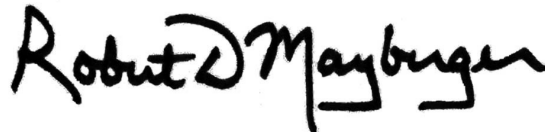
guilty of the charges following a tier III disciplinary hearing and the determination was affirmed on administrative appeal. This CPLR article 78 proceeding ensued.

We confirm. The misbehavior report and related documentation, together with the testimony of the correction officer who was involved in the altercation, provide substantial evidence supporting the determination of guilt (see Matter of Nelson v Fischer, 93 AD3d 1059 [2012]; Matter of Bridgeforth v Fischer, 78 AD3d 1401, 1401 [2010]). Petitioner's denial of the charges and claim that the misbehavior report was written in retaliation for a prior grievance presented a credibility issue for the Hearing Officer to resolve (see Matter of White v Fischer, 87 AD3d 1249, 1250 [2011]; Matter of Jackson v Dubray, 56 AD3d 919 [2008]). Although the Hearing Officer should not have denied petitioner's request for the medical records of the officer injured in the assault absent a showing that it would jeopardize institutional security, any such error was harmless in light of the overwhelming evidence presented establishing petitioner's guilt (see Matter of Jones v Fischer, 69 AD3d 1065, 1066 [2010], lv denied 16 NY3d 707 [2011]; Matter of Joseph v Fischer, 67 AD3d 1103, 1104 [2009]). Furthermore, upon reviewing the record, we do not find any indication that the Hearing Officer was biased or that the determination flowed from any alleged bias (see Matter of Vega v New York State Dept. of Correctional Servs., 92 AD3d 991, 992 [2012]; Matter of Kalwasinski v Bezio, 80 AD3d 1068, 1069 [2011]). Petitioner's remaining contentions are either unpreserved for our review or are lacking in merit.

Mercure, J.P., Lahtinen, Malone Jr., McCarthy 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