

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

Decided and Entered: June 28, 2012

513197

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In the Matter of JOSEPH  
GALLAGHER,  
Petitioner,

v

MEMORANDUM AND JUDGMENT

NEW YORK STATE DEPARTMENT OF  
CORRECTIONAL SERVICES,  
Respondent.

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Calendar Date: May 9, 2012

Before: Peters, P.J., Lahtinen, Spain, Stein and McCarthy, JJ.

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Joseph Gallagher, Marcy, petitioner pro se.

Eric T. Schneiderman, Attorney General, Albany (Peter H. Schiff 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 the Commissioner of Corrections and Community Supervision which found petitioner guilty of violating a prison disciplinary rule.

Petitioner, an inmate, was charged in a misbehavior report with violating the facility phone program guidelines by adding a telephone number to his phone contacts that listed a person with the same last name and address as that of a recently-paroled inmate, and then making three separate unauthorized attempts to telephone that number. Following a tier III disciplinary hearing, petitioner was found guilty of the charge. The determination was upheld on administrative appeal, with a reduction in the penalty imposed, and this CPLR article 78

proceeding ensued.

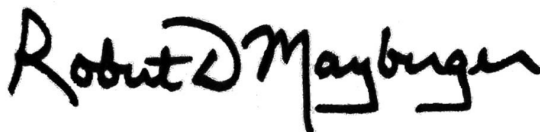
We confirm. The detailed misbehavior report, along with the testimony of the sergeant who authored it, provide substantial evidence supporting the determination of guilt (see Matter of Lovett v Smith, 80 AD3d 1039, 1040 [2011]). Although petitioner stated at the hearing that he was actually attempting to call the paroled inmate's brother and not the paroled inmate himself, this created a credibility issue for the Hearing Officer to resolve (see Matter of Lopez v Goord, 49 AD3d 1044, 1045 [2008], lv denied 11 NY3d 703 [2008]). Notably, in the course of describing the investigation, the sergeant testified that petitioner had previously addressed mail to the paroled inmate at that address, leading to the conclusion that he put the name of the brother on the telephone list in an attempt to circumvent the facility telephone program regulations. As for petitioner's contention that the Hearing Officer was biased against him, we are unpersuaded, inasmuch as "the record demonstrates that the finding of guilt was premised upon the evidence presented at the hearing" (Matter of Nelson v Fischer, 93 AD3d 1059, 1059 [2012]; see Matter of Barnes v Prack, 92 AD3d 990, 991 [2012]).

The remaining contentions advanced by petitioner have been examined and found to be lacking in merit.

Peters, P.J., Lahtinen, Spain, Stein and McCarthy, 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