

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

Decided and Entered: July 5, 2012

513379

In the Matter of ABRAHAM
MALDONADO,
Petitioner,

v

MEMORANDUM AND JUDGMENT

NEW YORK STATE DEPARTMENT OF
CORRECTIONAL SERVICES
et al.,
Respondents.

Calendar Date: May 9, 2012

Before: Rose, J.P., Lahtinen, Kavanagh, Garry and Egan Jr., JJ.

Abraham Maldonado, Sonyea, petitioner pro se.

Eric T. Schneiderman, Attorney General, Albany (Owen Demuth 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.

After receiving a tip that, among other things, money was going to be planted in one of the visitors' restrooms on a specified date, correction officers searched the women's restroom and found a packet of money wrapped in paper towels on top of a light fixture. The packet of money was then secured and replaced with a decoy packet. Thereafter, petitioner was sent into that restroom alone to mop the floor and, after a minute, the correction officers entered the restroom to find the decoy packet

on the floor close to where petitioner had been mopping. Petitioner was charged in a misbehavior report with smuggling and possession of contraband. He was found guilty of the charges following a tier III disciplinary hearing. The determination was affirmed upon administrative review, prompting the commencement of this CPLR article 78 proceeding.

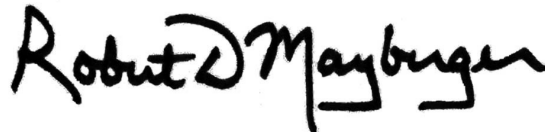
We confirm. The detailed misbehavior report, along with, among other things, the documentary evidence and hearing witnesses, provide substantial evidence supporting the determination of guilt (see Matter of Machicote v Bezio, 87 AD3d 763, 763 [2011]; Matter of Kirshtein v Bezio, 79 AD3d 1497, 1498 [2010]). Contrary to petitioner's argument, the fact that the packet of money was intercepted before he could retrieve it does not require annulment of the possession of contraband count (see 7 NYCRR 270.3 [b]; Matter of Thacker v Fischer, 68 AD3d 1310, 1310 [2009]; Matter of Rodriguez v Goord, 251 AD2d 737 [1998]). Further, inconsistencies in the hearing testimony, as well as petitioner's denials of wrongdoing and speculation as to the possible guilt of other inmates, raised credibility issues for resolution by the Hearing Officer (see Matter of Rouse v Fischer, 94 AD3d 1310 [2012]).

Finally, petitioner's contention that the penalty imposed was unduly harsh was not preserved for our review (see Matter of Peoples v Selsky, 33 AD3d 1179, 1180 [2006]).

Rose, J.P., Lahtinen, Kavanagh, Garry 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