

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

Decided and Entered: August 2, 2012

513495

---

In the Matter of ROY GREEN,  
Petitioner,

v

MEMORANDUM AND JUDGMENT

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

---

Calendar Date: June 6, 2012

Before: Peters, P.J., Mercure, Spain, Malone Jr. and  
McCarthy, JJ.

---

Roy Green, Napanoch, petitioner pro se.

Eric T. Schneiderman, Attorney General, Albany (Peter H.  
Schiff 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 Superintendent of Eastern Correctional Facility which found petitioner guilty of violating a prison disciplinary rule.

Approximately three weeks after petitioner was moved into a new cell, a correction officer conducting a search discovered that there was graffiti defacing the inside of petitioner's locker. As a result, petitioner was charged in a misbehavior report with destroying or damaging state property and possession of gang materials. Following a tier II disciplinary hearing, petitioner was found guilty of the charge alleging that he destroyed or damaged state property. That determination was

affirmed on administrative appeal, prompting the commencement of this CPLR article 78 proceeding.

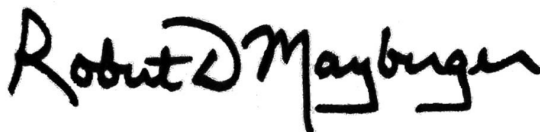
The detailed misbehavior report, combined with the hearing testimony, provide substantial evidence supporting the determination of guilt (see Matter of Hayes v Fischer, 78 AD3d 1396, 1396-1397 [2010]; Matter of Douglas v Fischer, 76 AD3d 1162 [2010]). Contrary to petitioner's argument, the absence of proof demonstrating that his cell was searched or inspected prior to his arrival does not necessarily negate the inference that he was responsible for the damage to his locker (cf. Matter of Fong v Goord, 36 AD3d 1099, 1100 [2007]; Matter of Lam Trang v Goord, 283 AD2d 816, 817 [2001]). In any event, one of the correction officers specifically testified that the graffiti could not have been in the locker prior to the time that petitioner moved in. Accordingly, we find no basis to disturb the determination of guilt.

The remaining issues raised by petitioner, including his claim that the proceeding was improperly transferred to this Court, have been examined and found to be lacking in merit.

Peters, P.J., Mercure, Spain, Malone Jr. 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