

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

Decided and Entered: August 2, 2012

513502

In the Matter of RYAN BROWN,
Petitioner,

v

MEMORANDUM AND JUDGMENT

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

Calendar Date: June 6, 2012

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

Ryan Brown, Dannemora, 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 respondent which found petitioner guilty of violating certain prison disciplinary rules.

During the course of an investigation which included the receipt of information from a confidential source, correction officials learned that, as part of his initiation into a gang, petitioner cut another inmate and caused a wound to the inmate's face. As a result, petitioner was charged in a misbehavior report with assaulting another inmate, engaging in violent conduct, possessing a weapon, engaging in gang-related activity and fighting. Following a tier III disciplinary hearing, he was found guilty of all of the charges, except for fighting. The determination was later affirmed on administrative appeal and

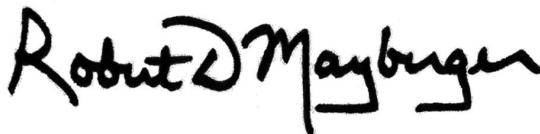
this CPLR article 78 proceeding ensued.

We confirm. The misbehavior report and the testimony of the correction sergeant who authored it, as well as the detailed and specific confidential information reviewed by the Hearing Officer in camera, provide substantial evidence supporting the determination of guilt (see Matter of Sanchez v Fischer, 92 AD3d 1061, 1062 [2012]; Matter of Samuel v Fischer, 53 AD3d 960, 960 [2008]). Contrary to petitioner's claim, the Hearing Officer conducted a proper inquiry to independently ascertain the reliability and credibility of the confidential information by reviewing the transcript of the confidential hearing (see Matter of Phipps v Fischer, 82 AD3d 1396, 1397 [2011]) and questioning the correction sergeant who interviewed the confidential source (see Matter of Williams v Fischer, 18 NY3d 888, 890 [2012]; Matter of Elliott v Fischer, 94 AD3d 1326, 1327 [2012]). Therefore, we find no reason to disturb respondent's determination.

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