

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

Decided and Entered: August 2, 2012

513612

In the Matter of CASWELL
SENIOR,
Petitioner,
v

MEMORANDUM AND JUDGMENT

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

Calendar Date: June 6, 2012

Before: Mercure, J.P., Rose, Lahtinen, Stein and McCarthy, JJ.

Caswell Senior, Malone, 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 Franklin County) to review a determination of respondent which found petitioner guilty of violating certain prison disciplinary rules.

As relevant here, petitioner was found guilty after a tier III disciplinary hearing of attempted smuggling, attempted possession of drugs and violating facility visiting procedures. He thereafter commenced this proceeding challenging the determination, and we confirm. Contrary to his contention, the misbehavior report, testimony from the investigating correction officer, the positive test results for cocaine and marihuana of the substances surrendered by petitioner's visitor, and confidential evidence provide substantial evidence to support the

determination (see Matter of Smiton v New York State Dept. of Correctional Servs., 70 AD3d 1148, 1149 [2010]).

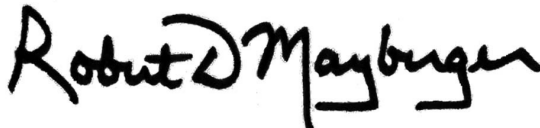
We are also unpersuaded by petitioner's procedural objections. Any alleged errors in the prehearing assistance were remedied by the Hearing Officer (see Matter of Martino v Goord, 38 AD3d 958, 959 [2007]). Petitioner further contends that the Hearing Officer impermissibly delayed by one day in seeking an extension of time to begin the hearing. Even if true, however, "the regulatory time limits are directory, not mandatory," and petitioner has demonstrated no prejudice as a result of that minimal delay (see Matter of Mackie v Goord, 49 AD3d 952, 953 [2008]).

Petitioner's remaining contentions have been reviewed and, to the extent they are properly before us, found to be without merit.

Mercure, J.P., Rose, Lahtinen, 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