

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

Decided and Entered: September 13, 2012

513835

In the Matter of JOHNNIE
BUNTING,
Petitioner,

v

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

MEMORANDUM AND JUDGMENT

Calendar Date: July 30, 2012

Before: Peters, P.J., Rose, Malone Jr., McCarthy and
Egan Jr., JJ.

Johnnie Bunting, Pine City, petitioner pro se.

Eric T. Schneiderman, Attorney General, Albany (Frank K.
Walsh 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.

Correction officials recovered from the outgoing prison mail a large envelope that petitioner was attempting to send to an individual at a law office. Inside the envelope, they found a manuscript written by petitioner, along with a note requesting the individual to retype it and make efforts to get it published. Petitioner had submitted an authorized advance request to obtain legal postage for this envelope containing personal correspondence. As a result, petitioner was charged in a

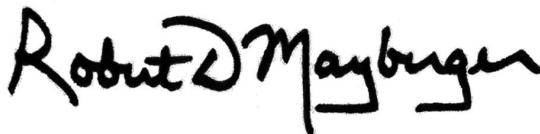
misbehavior report with solicitation, smuggling, misusing state property and violating facility correspondence procedures. At the conclusion of a tier III disciplinary hearing, he was found guilty of the charges, and the determination was affirmed upon administrative appeal. This CPLR article 78 proceeding ensued.

We confirm. The misbehavior report, together with the documents contained inside the envelope, which petitioner admitted to sending, as well as the testimony of the author of the report and the testimony considered by the Hearing Officer in camera, provide substantial evidence supporting the determination of guilt (see Matter of Sowell v Selsky, 43 AD3d 1226 [2007], lv denied 10 NY3d 703 [2008]; Matter of Reddick v Goord, 43 AD3d 503 [2007]). Contrary to petitioner's claim, the record does not reveal that the Hearing Officer was biased or that the determination flowed from any alleged bias (see Matter of Engles v Fischer, 78 AD3d 1410, 1411 [2010]; Matter of Hernandez v Fischer, 67 AD3d 1225, 1226 [2009]).

Peters, P.J., Rose, Malone Jr., McCarthy 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