

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

Decided and Entered: August 2, 2012

513843

In the Matter of REGINALD
HORNE,
Petitioner,

v

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

MEMORANDUM AND JUDGMENT

Calendar Date: June 6, 2012

Before: Peters, P.J., Mercure, Malone Jr., Kavanagh and
Egan Jr., JJ.

Reginald Horne, Alden, petitioner pro se.

Eric T. Schneiderman, Attorney General, Albany (William E.
Storrs 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.

After a correction sergeant received confidential
information that petitioner had a weapon in his cell, his cell
was searched and a broken toothbrush with a sharpened tweezer
half taped to the handle was discovered secreted between two
boxes underneath petitioner's bed. As a result, petitioner was
charged in a misbehavior report with possessing a weapon,
possessing an altered item and possessing contraband. He was
found guilty of the charges following a tier III disciplinary

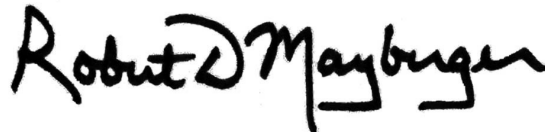
hearing and the determination was affirmed on administrative appeal. This CPLR article 78 proceeding ensued.

We confirm. Contrary to petitioner's claim, we do not find that there are significant gaps in the hearing transcript that prevent meaningful review (see Matter of Povoski v Fischer, 93 AD3d 963, 964 [2012]; Matter of Fragosa v Moore, 93 AD3d 979, 979 [2012]). The misbehavior report and related documentation, together with the testimony of the correction officers involved in the search, provide substantial evidence supporting the determination of guilt (see Matter of Alache v Fischer, 91 AD3d 1240, 1241 [2012]; Matter of Parra v Fischer, 76 AD3d 724, 725 [2010], lv denied 15 NY3d 714 [2010]). While petitioner argues that the Hearing Officer failed to independently assess the credibility of the confidential source, this was not necessary as the determination at issue was not based upon the confidential information but rather upon the evidence establishing that petitioner had a weapon in his cell (see Matter of Nimmons v Fischer, 68 AD3d 1311 [2009]; Matter of Terrence v Fischer, 64 AD3d 1110 [2009]). Likewise, as the report was sufficiently detailed to give petitioner notice of the charges to enable him to prepare a defense, we reject petitioner's claim that the misbehavior report was defective because it failed to reference the confidential information prompting the search (see Matter of Quezada v Fischer, 85 AD3d 1462, 1462 [2011]; Matter of Cody v Fischer, 84 AD3d 1651, 1651 [2011]). Lastly, petitioner's claim of inadequate employee assistance has not been preserved for our review (see Matter of Cespedes v New York State Dept. of Correctional Servs., 68 AD3d 1429, 1430 [2009]).

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