

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

Decided and Entered: April 27, 2017

523028

In the Matter of JOHN JAY
SANTIAGO,
Petitioner,

v

MEMORANDUM AND JUDGMENT

DONALD VENETTOZZI, as Acting
Director of Special Housing
and Inmate Disciplinary
Programs,
Respondent.

Calendar Date: February 28, 2017

Before: Peters, P.J., Rose, Devine, Clark and Aarons, JJ.

John Jay Santiago, Stormville, petitioner pro se.

Eric T. Schneiderman, Attorney General, Albany (Owen Demuth 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 Commissioner of Corrections and Community Supervision finding petitioner guilty of violating certain prison disciplinary rules.

A cell frisk of petitioner's prison cell revealed a hidden weapon in the form of a 5¼-inch-long eyeglass arm with a sharpened metal point at the end. As a result, petitioner was charged in a misbehavior report with possessing a weapon or dangerous instrument, possessing an altered item and altering state property. Following a tier III disciplinary hearing, petitioner was found guilty of possessing a weapon or dangerous

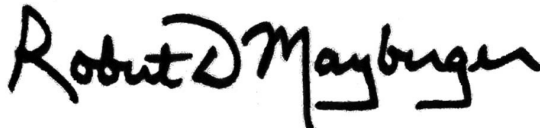
instrument and possessing an altered item, and the altering state property charge was dismissed. Upon administrative review, that determination was upheld. This CPLR article 78 proceeding ensued.¹

We confirm. Contrary to petitioner's contention, we cannot agree that he was improperly denied his right to observe the search of his cell. Our review of the confidential information submitted for in camera review reveals that the order to remove petitioner from his cell during the search was based upon a determination that his presence would have constituted a safety or security risk. Under these circumstances, petitioner was properly denied the right to observe the search of his cell and his removal during the search was not in violation of Department of Corrections and Community Supervision Directive No. 4910 (compare Matter of Kirby v Annucci, 147 AD3d 1134, 1135 [2017]; Matter of Mingo v Chappius, 106 AD3d 1160, 1161 [2013]).

Peters, P.J., Rose, Devine, Clark and Aarons, JJ., concur.

ADJUDGED that the determination is confirmed, without costs, and petition dismissed.

ENTER:



Robert D. Mayberger
Clerk of the Court

¹ While the verified petition does not appear to raise a question of substantial evidence, thereby rendering the transfer of this proceeding improper, we nevertheless retain jurisdiction and address the merits in the interest of judicial economy (see Matter of Mercer v Venettozzi, 142 AD3d 1246, 1247 n [2016]; Matter of Allen v Venettozzi, 139 AD3d 1208, 1208 n [2016]).