

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

Decided and Entered: March 16, 2017

523036

In the Matter of LEROY JAMISON,
Petitioner,

v

MEMORANDUM AND JUDGMENT

THOMAS GRIFFIN, as
Superintendent of Green
Haven Correctional Facility,
Respondent.

Calendar Date: January 24, 2017

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

Leroy Jamison, Beacon, 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 finding petitioner guilty of violating a prison disciplinary rule.

Petitioner was charged in a misbehavior report with refusing a direct order, interfering with an employee and being out of place. Following a tier II disciplinary hearing, petitioner was found guilty of refusing a direct order and not guilty of the remaining charges. That determination was affirmed upon administrative appeal, and this CPLR article 78 proceeding ensued.

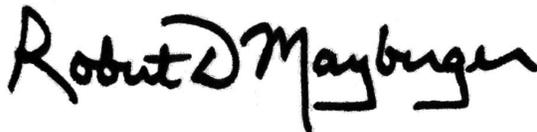
Contrary to petitioner's contention, the misbehavior report and testimony at the hearing provide substantial evidence to

support the determination of guilt. Specifically, the misbehavior report relates, and petitioner's testimony confirmed, that when petitioner was directed to go downstairs to get foam for a chair, he answered, "no, send someone else." As the record establishes that petitioner did not promptly comply with the direct order, the determination will not be disturbed (see Matter of Bailey v Prack, 125 AD3d 1028, 1028 [2015]; Matter of Tarbell v Prack, 89 AD3d 1342, 1343 [2011]). Furthermore, the record makes clear that the foregoing conduct formed the basis for the determination of guilt and not any other alleged conduct by petitioner, such as riding the elevator without an escort.

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