

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

Decided and Entered: March 16, 2017

523262

In the Matter of ANTHONY DAVIS,
Petitioner,

v

MEMORANDUM AND JUDGMENT

ANTHONY J. ANNUCCI, as Acting
Commissioner of Corrections
and Community Supervision,
Respondent.

Calendar Date: January 24, 2017

Before: Garry, J.P., Egan Jr., Rose, Clark and Aarons, JJ.

Anthony Davis, Wallkill, petitioner pro se.

Eric T. Schneiderman, Attorney General, Albany (Marcus J. Mastracco 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 certain prison disciplinary rules.

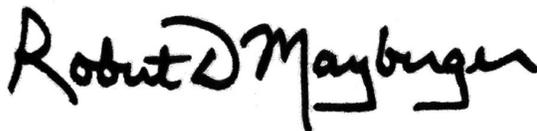
Following an investigation into an incident where an inmate had coffee thrown on him that caused a delay in the meal run, petitioner was charged in a misbehavior report with engaging in violent conduct, creating a disturbance and engaging in an unhygienic act. He was found guilty of all three charges at the conclusion of a tier III disciplinary hearing. The determination was affirmed upon administrative appeal. This CPLR article 78 proceeding ensued.

We confirm. The misbehavior report and the investigating sergeant's testimony that petitioner admitted throwing the coffee provide substantial evidence to support the determination (see Matter of Cole v Fischer, 94 AD3d 1318, 1318 [2012]; Matter of Rivera v Goord, 16 AD3d 788, 788 [2005]). Although the author of the misbehavior report did not witness the incident, he "ascertained the facts of the incident" through an investigation and, therefore, properly issued the misbehavior report (7 NYCRR 251-3.1 [b]). To the extent that petitioner challenges the lack of an endorsement on the misbehavior report by a company officer who provided information during the investigation, petitioner did not request the company officer as a witness or demonstrate any prejudice as a result therefrom (see Matter of Winbush v Goord, 6 AD3d 821, 822 [2004]; Matter of Torres v Goord, 275 AD2d 840, 841 [2000]). Petitioner's remaining contentions, including that he was not provided with various documents, have been reviewed and found to be without merit.

Garry, J.P., Egan Jr., Rose, 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