

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

Decided and Entered: September 21, 2017

523779

In the Matter of ROBERT
DOOLITTLE,
Petitioner,

v

MEMORANDUM AND JUDGMENT

MICHAEL KIRKPATRICK, as
Superintendent of Clinton
Correctional Facility,
et al.,
Respondents.

Calendar Date: August 7, 2017

Before: McCarthy, J.P., Egan Jr., Rose, Aarons and Pritzker, JJ.

Robert Doolittle, Dannemora, petitioner pro se.

Eric T. Schneiderman, Attorney General, Albany (Marcus J. Mastracco of counsel), for respondents.

Proceeding pursuant to CPLR article 78 (transferred to this Court by order of the Supreme Court, entered in Clinton County) to review a determination of respondent Superintendent of Clinton Correctional Facility finding petitioner guilty of violating certain prison disciplinary rules.

Petitioner was charged in a misbehavior report with tampering with an electrical device, tattooing and possessing an altered item. The charges were based upon a search of petitioner's cell, which disclosed an altered SONY Walkman with its adapter wired to a tattoo gun, which had been made from an altered beard trimmer. Also recovered were gel pens used for ink and tattoo design materials. At the tier II disciplinary

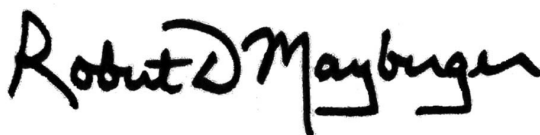
hearing, petitioner pleaded guilty to tampering with an electrical device and was found guilty of the remaining charges. The determination was upheld on administrative appeal and this CPLR article 78 proceeding ensued.

We confirm. Initially, petitioner's guilty plea precludes any challenge to whether substantial evidence supports the charge of tampering with an electrical device (see Matter of Sims v Russo, 148 AD3d 1409, 1409 [2017]). With regard to the remaining charges, the misbehavior report, hearing testimony and photographs of the altered and tattoo-related items recovered from his cell provide substantial evidence for the determination of guilt (see Matter of Rodriguez v McGinnis, 24 AD3d 845, 846 [2005]; Matter of Motzer v Goord, 273 AD2d 559, 559 [2000]). Petitioner testified, acknowledging that all of the items were in his cell at the time it was searched and, while he offered innocent explanations for why he came into their possession and their condition and use, this presented factual and credibility issues for the Hearing Officer to resolve (see Matter of Legeros v Annucci, 147 AD3d 1175, 1176 [2017]). Petitioner's remaining contentions are either unpreserved for our review or lack merit.

McCarthy, J.P., Egan Jr., Rose, Aarons and Pritzker, 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