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

Decided and Entered: December 7, 2017 524869

In the Matter of DERRICK HUGHES,

Petitioner,

 \mathbf{v}

MEMORANDUM AND JUDGMENT

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

Calendar Date: October 24, 2017

Before: Peters, P.J., Garry, Rose, Clark and Rumsey, JJ.

Derrick Hughes, Romulus, 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.

Petitioner was charged in a misbehavior report with creating a disturbance, refusing a direct order, making threats, engaging in violent conduct, engaging in a demonstration, interfering with an employee and rioting. After a tier III disciplinary hearing, petitioner was found guilty of the charges, and that determination was upheld on administrative appeal. Petitioner thereafter commenced this CPLR article 78 proceeding.

Respondent concedes, and we agree, that pervasive inaudible gaps in the disciplinary hearing transcript preclude meaningful review. Therefore, the determination must be annulled and the matter remitted for a new hearing (see Matter of Caldwell v Annucci, 140 AD3d 1248, 1248-1249 [2016]; Matter of Barnes v Fischer, 108 AD3d 990, 990-991 [2013], lv denied 22 NY3d 855 [2013]; Matter of La Van v New York State Dept. of Correctional Servs., 47 AD3d 1153, 1153 [2008]).

Peters, P.J., Garry, Rose, Clark and Rumsey, JJ., concur.

ADJUDGED that the determination is annulled, without costs, and matter remitted to respondent for further proceedings not inconsistent with this Court's decision.

ENTER:

Robert D. Mayberger Clerk of the Court