

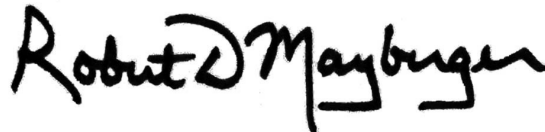
"nothing to say." At the conclusion of the rehearing, petitioner was found guilty of fighting and refusing a direct order, but not guilty of the remaining charges, and a penalty was imposed. Upon administrative review, the determination was affirmed with a modified penalty. Petitioner thereafter commenced this proceeding pursuant to CPLR article 78 to challenge respondent's determination.

Although the facility cook who witnessed the incident testified that petitioner was not the aggressor – a premise subsequently credited by the Hearing Officer – and conceded that she did not actually see petitioner strike the other inmate, the misbehavior report prepared by the correction officer who responded to the scene and witnessed the ongoing altercation nonetheless established that petitioner fought with another inmate and refused orders to cease and desist. Such proof constitutes substantial evidence to support the determination of guilt (see Matter of Lopez v Annucci, 138 AD3d 1338, 1339 [2016]; Matter of Ramos v Venettozzi, 131 AD3d 1309, 1310 [2015], lv denied 26 NY3d 913 [2015]; Matter of Cato v Annucci, 127 AD3d 1481, 1481 [2015]). Although petitioner asserted that he did not throw any punches, this presented a credibility issue for the Hearing Officer to resolve (see Matter of Ramos v Venettozzi, 131 AD3d at 1310). Petitioner's remaining contentions are either unpreserved for our review or have been examined and found to be lacking in merit.

McCarthy, J.P., Egan Jr., Lynch, 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