

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

Decided and Entered: June 21, 2018

525937

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In the Matter of IJAL SUDLER,  
Petitioner,

v

MEMORANDUM AND JUDGMENT

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

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Calendar Date: May 8, 2018

Before: Egan Jr., J.P., Lynch, Clark, Mulvey and Aarons, JJ.

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Ijal Sudler, Dannemora, petitioner pro se.

Barbara D. Underwood, Attorney General, Albany (Victor Paladino of counsel), for respondent.

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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.

As a mailroom clerk was processing mail being sent out of the cellblock where petitioner was housed, she noticed that the name of an inmate who was not housed in that cellblock was the return addressee on an envelope addressed to an outside third party. She brought it to the Superintendent of the facility and he gave her permission to open it. Inside was a letter

referencing the Social Security numbers and dates of birth of two inmates, which the sender urged the recipient to use to file fraudulent tax returns. A few days later, the mail clerk noticed another envelope with petitioner's name as the return addressee that contained handwriting similar to that which appeared on the first envelope. An investigation ensued, during which petitioner's handwriting was compared to that on the letter and the envelopes, resulting in a misbehavior report charging petitioner with multiple prison disciplinary violations. Following a lengthy tier III hearing, he was found guilty of solicitation, possessing contraband, possessing stolen property and violating facility correspondence procedures. The determination was later affirmed on administrative appeal and this CPLR article 78 proceeding ensued.<sup>1</sup>

Petitioner's sole claim is that the Superintendent did not provide written authorization pursuant to Department of Corrections and Community Supervision Directive No. 4422 (III) (B) (9) (see 7 NYCRR 720.3 [e]) for opening the outgoing correspondence that led to the investigation implicating him as the sender. Significantly, such correspondence provided the basis for all of the disciplinary rule violations of which petitioner was found guilty. The directive at issue specifically provides that "[o]utgoing correspondence . . . shall not be opened, inspected, or read without express written authorization from the facility superintendent" (7 NYCRR 720.3 [e]). It further states that "[s]uch written authorization shall set forth the specific facts forming the basis for the action" (7 NYCRR 720.3 [e] [1]). Here, there was no proof presented that the Superintendent issued a written authorization supported by specific facts permitting the correction official to open the correspondence. Rather, the record suggests that the authorization was verbal, as no written instrument was ever produced and the Superintendent did not testify at the hearing.

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<sup>1</sup> We note that the proceeding was properly transferred to this Court as the petition challenges the legality of the evidence confiscated by the mailroom clerk, which provided the basis for the disciplinary determination (see Matter of McDay v Annucci, 156 AD3d 1082, 1083 [2017]).

Under these circumstances, the determination of guilt must be annulled (see Matter of Wilson v Commissioner of N.Y. State Dept. of Corr. & Community Supervision, 148 AD3d 1368, 1370 [2017]; Matter of Ramos v Annucci, 141 AD3d 977 [2016]; Matter of Mena v Fischer, 115 AD3d 1039 [2014]; compare Matter of Lozada v Fischer, 68 AD3d 1306, 1306 [2009], lv denied 14 NY3d 704 [2010]).

Egan Jr., J.P., Lynch, Clark, Mulvey and Aarons, JJ.,  
concur.

ADJUDGED that the determination is annulled, without costs, petition granted and respondent is directed to expunge all references to this matter from petitioner's institutional record and to restore any loss of good time.

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

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

Decided and Entered: November 21, 2018

525937

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In the Matter of IJAL SUDLER,  
Petitioner,

v

DECISION AND ORDER  
ON MOTION

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

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Motion for reargument or, in the alternative, for permission to appeal to the Court of Appeals.

Upon the papers filed in support of the motion and the papers filed in opposition thereto, it is

ORDERED that the motion for reargument is granted, without costs, the memorandum and judgment decided and entered June 21, 2018 is vacated, and the attached memorandum and judgment is substituted therefor; and it is further

ORDERED that the motion for permission to appeal to the Court of Appeals is denied, without costs.

Egan Jr., J.P., Lynch, Clark, Mulvey and Aarons, JJ.,  
concur.

ENTER:



Robert D. Mayberger  
Clerk of the Court

State of New York  
Supreme Court, Appellate Division  
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of birth of two inmates, which the sender urged the recipient to use to file fraudulent tax returns. A few days later, the mailroom clerk noticed another envelope with petitioner's name as the return addressee that contained handwriting similar to that which appeared on the first envelope. The mailroom clerk gave this second envelope to the addressee, a correction lieutenant, who opened it. An investigation ensued, during which petitioner's handwriting was analyzed, resulting in a misbehavior report charging petitioner with multiple prison disciplinary violations. Following a lengthy tier III hearing, he was found guilty of solicitation, possessing stolen property and violating facility correspondence procedures. The determination was later affirmed on administrative appeal and this CPLR article 78 proceeding ensued.<sup>1</sup>

Petitioner's sole claim is that the Superintendent did not provide written authorization pursuant to Department of Corrections and Community Supervision Directive No. 4422 (III) (B) (9) (see 7 NYCRR 720.3 [e]) for opening the outgoing envelopes that led to the investigation implicating him as the sender. Significantly, the letters in the envelopes provided the basis for all of the disciplinary rule violations of which petitioner was found guilty. However, inasmuch as the first envelope listed the name of another inmate as the return addressee, petitioner lacks standing to challenge the opening of the envelope and the legitimacy of the procedures followed with respect thereto (see Matter of Odom v Fischer, 65 AD3d 1425, 1426 [2009]; Matter of Alvarez v Goord, 17 AD3d 945, 946 [2005]). As to the second envelope, authorization was unnecessary because it was opened by the person to whom such envelope was addressed. Accordingly, petitioner's claim is without merit.

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<sup>1</sup> We note that the proceeding was properly transferred to this Court inasmuch as the petition raised the issue of substantial evidence (see Matter of McDay v Annucci, 156 AD3d 1082, 1083 [2017]; Matter of Benitez v Annucci, 139 AD3d 1215, 1215 [2016]). Petitioner, however, abandoned such issue by failing to make an argument with respect thereto in his brief (see Matter of Garcia v Smith, 78 AD3d 1362, 1363 n [2010]).

Egan Jr., J.P., Lynch, Clark, Mulvey 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