

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

Decided and Entered: November 21, 2018

525937

In the Matter of IJAL SUDLER,
Petitioner,

v

MEMORANDUM AND JUDGMENT

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

Calendar Date: May 8, 2018

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

Ijal Sudler, Dannemora, petitioner pro se.

Barbara D. Underwood, Attorney General, Albany (Victor Paladino 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.

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 the envelope to the Superintendent of the facility and he gave her verbal 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 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.¹

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.

¹ 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