

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

Decided and Entered: November 8, 2018

526371

In the Matter of SHYTIQUE
KELLY,
Petitioner,

v

MEMORANDUM AND JUDGMENT

A. RODRIGUEZ, as Acting Director
of Special Housing and Inmate
Disciplinary Programs,
Respondent.

Calendar Date: September 18, 2018

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

Shytique Kelly, Attica, 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 the Commissioner of
Corrections and Community Supervision finding petitioner guilty
of violating certain prison disciplinary rules.

During the course of an investigation that involved the
monitoring of petitioner's telephone calls, correction officials
discovered that petitioner was enlisting his wife to bring drugs
into the correctional facility during visits to the facility and
that he was also using the telephone system to make third-party

telephone calls. As a result, he was charged in a misbehavior report with conspiring to introduce drugs into the correctional facility, soliciting another to smuggle contraband, violating facility visiting room procedures and making third-party telephone calls. Petitioner was found guilty of the charges following a tier III disciplinary hearing. The determination was later affirmed on administrative appeal with a modified penalty, and this CPLR article 78 proceeding ensued.

We confirm. Initially, insofar as petitioner pleaded guilty to making third-party telephone calls, he is precluded from challenging the sufficiency of the evidence supporting that part of the determination finding him guilty of this charge (see Matter of LaGrave v Venettozzi, 157 AD3d 1184, 1184 [2018]; Matter of Sierra v Venettozzi, 153 AD3d 1548, 1549 [2017]). As for the remaining charges, the misbehavior report, together with the testimony of its author who conducted the investigation and the transcribed portions of the taped telephone conversations, provide substantial evidence supporting the determination of guilt (see Matter of Harrison v Fischer, 104 AD3d 1032, 1032 [2013]; Matter of Matthews v Fischer, 95 AD3d 1529, 1530 [2012]). Contrary to petitioner's claim, we do not find that the Hearing Officer was biased or that the determination flowed from any alleged bias (see Matter of Safford v Annucci, 144 AD3d 1271, 1272-1273 [2016], lv denied 29 NY3d 901 [2017]; Matter of Cognata v Fischer, 85 AD3d 1456, 1457 [2011]).

McCarthy, J.P., Egan Jr., Lynch, Aarons and Pritzker, J.J.,
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 style with a large, stylized 'R' and 'M'.

Robert D. Mayberger
Clerk of the Court