

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

Decided and Entered: November 1, 2018

526471

In the Matter of INFINITE
GEORGE,
Petitioner,

v

MEMORANDUM AND JUDGMENT

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

Calendar Date: September 18, 2018

Before: McCarthy, J.P., Egan Jr., Devine, Mulvey and
Rumsey, JJ.

Infinite George, Dannemora, petitioner pro se.

Barbara D. Underwood, Attorney General, Albany (Frank
Brady 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 placed in the facility's infirmary after a
correction officer observed petitioner acting and responding
unusually, leading him to believe that petitioner was under the
influence of an intoxicant. As a result of this incident,
petitioner was charged in a misbehavior report with using an

intoxicant. Later, while in the infirmary, petitioner broke a window in the observation room, threw shards of glass at staff, refused direct orders to place his hands in the door's hatch, threatened to kill staff while holding a piece of glass and threw fecal matter at them through the broken window. Force was eventually used to restrain petitioner, and he was subsequently charged in a second misbehavior report with making threats, damaging state property, violent conduct, creating a disturbance, refusing direct orders, possessing a weapon and committing unhygienic acts. At the ensuing combined tier III prison disciplinary hearing, petitioner pleaded not guilty to possessing a weapon and using an intoxicant and pleaded guilty to the remaining charges. At the conclusion of the hearing, the Hearing Officer found petitioner not guilty of possessing a weapon and guilty of using an intoxicant as well as the six remaining charges to which he pleaded guilty. The determination was affirmed on administrative appeal, and this CPLR article 78 proceeding ensued.

Initially, with regard to that part of the determination finding petitioner guilty of using an intoxicant, respondent concedes, and we agree, that substantial evidence does not support the finding of guilt (see Matter of Truman v Venettozzi, 156 AD3d 974, 975 [2017]; Matter of McCaskell v Rodriguez, 148 AD3d 1407, 1408 [2017]). Inasmuch as petitioner pleaded guilty to the remaining charges, he is precluded from challenging the sufficiency of the evidence supporting them (see Matter of Reed v Annucci, 155 AD3d 1193, 1194 [2017]; Matter of Ashley v Annucci, 145 AD3d 1238, 1239 [2016], lv denied 29 NY3d 905 [2017]). Although we annul that part of the determination finding petitioner guilty of using an intoxicant, we need not remit the matter for a reassessment of the penalty on the remaining charges given that petitioner has already served the penalty and no loss of good time was imposed (see Matter of Love v Venettozzi, 161 AD3d 1333, 1334 [2018]; Matter of Truman v Venettozzi, 156 AD3d at 975). We have considered petitioner's remaining contentions and find that they are either unpreserved for our review or are lacking in merit.

McCarthy, J.P., Egan Jr., Devine, Mulvey and Rumsey, JJ.,
concur.

ADJUDGED that the determination is modified, without costs, by annulling so much thereof as found petitioner guilty of using an intoxicant; petition granted to that extent and respondent is directed to expunge all references to this charge from petitioner's institutional record; and, as so modified, confirmed.

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