

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

Decided and Entered: September 19, 2019

527977

In the Matter of MARCUS FRYE,
Petitioner,

v

COMMISSIONER OF THE DEPARTMENT
OF CORRECTIONS AND
COMMUNITY SUPERVISION,
Respondent.

MEMORANDUM AND JUDGMENT

Calendar Date: August 30, 2019

Before: Egan Jr., J.P., Clark, Devine, Aarons and Pritzker, JJ.

Marcus Frye, Auburn, petitioner pro se.

Letitia James, Attorney General, Albany (Marcus J. Mastracco 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.

While a correction officer was performing his duties preparing food carts for the inmates, he heard loud banging and yelling coming from the cellblock where petitioner was housed. When he went to investigate, he observed a number of inmates, including petitioner, kicking their cells and shouting profanities. All of the inmates refused the officer's directive to cease such activity, and petitioner threatened to spit on the

officer if the officer did not move away from his cell. As a result, petitioner was charged in a misbehavior report with making threats, creating a disturbance, interfering with an employee, refusing a direct order and engaging in a demonstration. He refused to attend the tier III disciplinary hearing that followed, and it was conducted in his absence. At its conclusion, petitioner was found guilty of the charges, and the determination was later affirmed on administrative appeal. Petitioner commenced this CPLR article 78 proceeding challenging the determination.

We confirm. The detailed misbehavior report – standing alone – provides substantial evidence supporting the determination finding petitioner guilty of the disciplinary rule violations (see Matter of Johnson v Lee, 166 AD3d 1275, 1275 [2018]; Matter of Nova v Miller, 166 AD3d 1191, 1193 [2018]). We decline to address petitioner's request for habeas corpus relief as it was not raised in his petition, which challenges only the disciplinary determination. We have considered petitioner's remaining contentions and find that they either have not been preserved for our review or are lacking in merit.

Egan Jr., J.P., Clark, Devine, Aarons and Pritzker, JJ., concur.

ADJUDGED that the determination is confirmed, without costs, and petition dismissed.

ENTER:



Robert D. Mayberger
Clerk of the Court