

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

Decided and Entered: March 16, 2017

523217

---

In the Matter of NORMOND  
GAINNEY,  
Petitioner,

v

MEMORANDUM AND JUDGMENT

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

---

Calendar Date: January 24, 2017

Before: Peters, P.J., McCarthy, Lynch, Rose and Clark, JJ.

---

Normond Gainey, Altona, petitioner pro se.

Eric T. Schneiderman, 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 a prison disciplinary rule.

Based upon confidential information regarding his possible drug use, petitioner was ordered to submit to a urinalysis test, which twice tested positive for the presence of synthetic marihuana. As a result, petitioner was charged in a misbehavior report with being under the influence of an intoxicant and, following a tier III disciplinary hearing, was found guilty as charged. That determination was affirmed upon administrative appeal and this CPLR article 78 proceeding ensued.

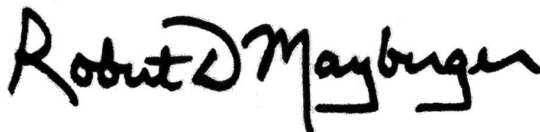
We confirm. The misbehavior report, drug test results, related documentation and the hearing testimony provide substantial evidence to support the finding of guilt (see Matter of Hines v Venettozzi, 142 AD3d 1219, 1220 [2016]; Matter of Belle v Prack, 140 AD3d 1509, 1510 [2016]). Contrary to petitioner's contention, the record establishes that the correction officer who performed the urinalysis tests was properly trained and certified to use the testing device (see Matter of Hill v Smith, 73 AD3d 1418, 1419 [2010]). Furthermore, the reliability of the test results was established through documentary evidence and hearing testimony as to the chain of custody and the adherence to proper testing procedures (see Matter of Shepherd v Annucci, 142 AD3d 1244, 1244 [2016], lv denied \_\_\_ NY3d \_\_\_ [Feb. 9, 2017]; Matter of Belle v Prack, 140 AD3d at 1510).

We are unpersuaded by petitioner's contention that he was improperly charged with the use of an intoxicant as we have previously recognized that rule 113.13 is applicable in situations involving synthetic marihuana (see Matter of Streeter v Annucci, 145 AD3d 1300, 1301 [2016]; Matter of Rivera v Venettozzi, 138 AD3d 1293, 1294 [2016]). Petitioner's remaining contentions, to the extent that they are preserved for our review, are without merit.

Peters, P.J., McCarthy, Lynch, Rose and Clark, 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