

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

Decided and Entered: December 14, 2017

523560

In the Matter of MOHD MUHAMMAD
Petitioner,

v

MEMORANDUM AND JUDGMENT

PAUL M. GONYEA, as
Superintendent of Mohawk
Correctional Facility,
Respondent.

Calendar Date: October 24, 2017

Before: Peters, P.J., Garry, Devine, Mulvey and Rumsey, JJ.

Mohd Muhammad, Rome, 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.

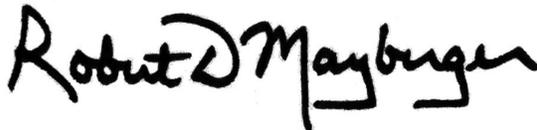
Petitioner was charged in a misbehavior report with smoking and possessing authorized property in an unauthorized area. According to the report, a correction officer smelled smoke coming from inside an inmate bathroom. Petitioner was observed exiting the bathroom and was ordered to empty his pockets, revealing a cigarette lighter and three cigarettes. Following a tier II disciplinary hearing, petitioner was found not guilty of smoking, but guilty of the remaining charge. This determination was affirmed on administrative appeal and this CPLR article 78 proceeding ensued.

We confirm. The misbehavior report and the hearing testimony provide substantial evidence supporting the determination of guilt (see Matter of Vega v Prack, 141 AD3d 1059, 1060 [2016]; Matter of Shepherd v Commissioner of Corr. & Community Supervision, 123 AD3d 1283, 1283 [2014]). Petitioner's contention that he was unaware that he was not authorized to have the items in the bathroom is belied by his admission at the hearing that he knew the items were unauthorized in that area and had forgotten that they were in his pocket. We note that, even assuming that petitioner unintentionally carried the items into the bathroom, the rule that he violated "applies regardless of [his] intent" (Matter of Bottom v Annucci, 26 NY3d 983, 986 [2015]).

Peters, P.J., Garry, Devine, Mulvey and Rumsey, 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