

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

Decided and Entered: November 2, 2017

524127

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In the Matter of MARTE TEJADA  
JOHANSEL,  
Petitioner,

v

MEMORANDUM AND JUDGMENT

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

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Calendar Date: September 19, 2017

Before: Peters, P.J., Egan Jr., Devine, Aarons and Rumsey, JJ.

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Marte Tejada Johansel, Dannemora, petitioner pro se.

Eric T. Schneiderman, Attorney General, Albany (Victor  
Paladino of counsel), for respondent.

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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.

During the course of an investigation, correction officials received confidential information identifying petitioner as the leader of an unauthorized gang who ordered an assault on at least two other inmates and who had been distributing razor-type weapons throughout the facility. As a result, petitioner was charged in a misbehavior report with conspiring to assault an inmate, engaging in gang activity, possessing a weapon and engaging in violent conduct. Following a tier III disciplinary hearing, petitioner was found guilty of the charges. That

determination was upheld upon administrative appeal. This CPLR article 78 proceeding ensued.

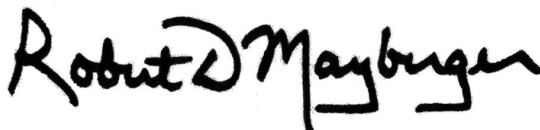
We confirm. The misbehavior report, the testimony of its author and the confidential testimony and information provide substantial evidence supporting the finding of guilt (see Matter of Chandler v Annucci, 135 AD3d 1258, 1259 [2016]; Matter of Baez v Bellnier, 131 AD3d 771, 771 [2015]; Matter of Pompey v Prack, 128 AD3d 1251, 1252 [2015]). Moreover, the Hearing Officer's confidential interview with the correction officer who authored the misbehavior report and conducted the investigation was sufficiently detailed to independently assess the reliability of the confidential information (see Matter of Williams v Fischer, 18 NY3d 888, 890 [2012]; Matter of DeJesus v Venettozzi, 145 AD3d 1275, 1276 [2016], lv denied 29 NY3d 908 [2017]).

While petitioner also avers that he was improperly denied the right to call certain witnesses at the hearing, the record demonstrates that petitioner specifically and intelligently told the Hearing Officer during the hearing that he did not wish to call any further witnesses (see Matter of Sparks v Annucci, 144 AD3d 1352, 1353 [2016]; Matter of Brown v Barkley, 67 AD3d 1147, 1148 [2009], lv denied 14 NY3d 702 [2010]). Petitioner's remaining contentions have been examined and found to be without merit.

Peters, P.J., Egan Jr., Devine, Aarons 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