

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

Decided and Entered: August 3, 2017

524138

In the Matter of LEON SIMMONS,
Petitioner,

v

MEMORANDUM AND JUDGMENT

DONALD VENETTOZZI, as Acting
Director of Special Housing
and Inmate Disciplinary
Programs, et al.,
Respondents.

Calendar Date: June 12, 2017

Before: Garry, J.P., Lynch, Devine, Aarons and Pritzker, JJ.

Leon Simmons, Ogdensburg, petitioner pro se.

Eric T. Schneiderman, Attorney General, Albany (William E. Storrs of counsel), for respondents.

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 the Commissioner of Corrections and Community Supervision finding petitioner guilty of violating a prison disciplinary rule.

While responding to a medical emergency, a correction sergeant observed petitioner to be acting in an unusual manner, then become unresponsive and begin vomiting. Petitioner was taken to the facility infirmary and later to the hospital, but no medical reason for his condition was identified. Based upon his observations and experience, the sergeant concluded that petitioner had been under the influence of an intoxicant. As a result, petitioner was charged in a misbehavior report with

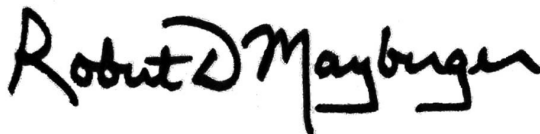
violating the prison disciplinary rule prohibiting inmates from using intoxicants, and he was found guilty following a tier III disciplinary hearing. The determination was later affirmed on administrative appeal and this CPLR article 78 proceeding ensued.

We confirm. The detailed misbehavior report and testimony of the sergeant who observed petitioner and that of the nurse who reviewed his medical records, both of whom opined that petitioner was under the influence of some type of intoxicant, provide substantial evidence supporting the determination of guilt (see Matter of Vargus v Annucci, 147 AD3d 1124, 1125 [2017]; see also Matter of Panek v Goord, 23 AD3d 966, 967 [2005], lv denied 6 NY3d 709 [2006]). The absence of positive urinalysis test results is not dispositive here (see Matter of Vargus v Annucci, 147 AD3d at 1124; see also Matter of Panek v Goord, 23 AD3d at 967). We have considered petitioner's remaining contentions and find that they are either unpreserved for our review or are lacking in merit.

Garry, J.P., Lynch, Devine, Aarons and Pritzker, 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