

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

Decided and Entered: December 14, 2017

524754

In the Matter of JERVAL JONES,
Petitioner,

v

MEMORANDUM AND JUDGMENT

ANTHONY J. ANNUCCI, as Acting
Commissioner of Corrections
and Community Supervision,
et al.,
Respondents.

Calendar Date: October 24, 2017

Before: McCarthy, J.P., Egan Jr., Devine, Mulvey and
Pritzker, JJ.

Jerval Jones, Dannemora, petitioner pro se.

Eric T. Schneiderman, Attorney General, Albany (Marcus J. Mastracco 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 respondent Commissioner of Corrections and Community Supervision finding petitioner guilty of violating certain prison disciplinary rules.

As a result of confidential information obtained during an investigation, it was determined that petitioner and another inmate had threatened violence against a correction officer within the facility's dorm in an attempt to gather support from other inmates housed in that dorm. As a result, petitioner was charged in a misbehavior report with conspiring to assault a staff member, creating a disturbance, engaging in violent conduct

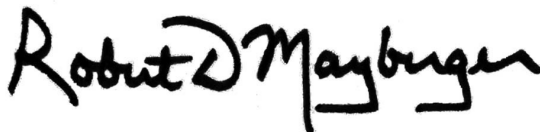
and making threats. Following a tier III disciplinary hearing, petitioner was found not guilty of making threats but guilty of the remaining charges. The determination was affirmed on administrative appeal, and this CPLR article 78 proceeding ensued.

We confirm. The misbehavior report, together with the confidential testimony and documents considered by the Hearing Officer in camera, provide substantial evidence to support the finding of guilt (see Matter of Canzater-Smith v Venettozzi, 150 AD3d 1518, 1518 [2017]; Matter of Davis v Annucci, 137 AD3d 1437, 1438 [2016]). The testimony of petitioner and his inmate witnesses denying petitioner's involvement in the incident presented a credibility issue for the Hearing Officer to resolve (see Matter of Harriott v Koenigsmann, 149 AD3d 1440, 1441 [2017]; Matter of Sherman v Annucci, 142 AD3d 1196, 1197 [2016]). Petitioner's claim that the Hearing Officer did not independently assess the reliability of the confidential information has not been preserved for our review due to petitioner's failure to raise it at the hearing (see Matter of Stone v Fischer, 62 AD3d 1064, 1065 [2009]; Matter of Handley v Selsky, 282 AD2d 798, 799 [2001]). Petitioner's remaining contentions, including his claim that the Hearing Officer exhibited bias, have been considered and are either unpreserved for our review or are lacking in merit.

McCarthy, J.P., Egan Jr., Devine, Mulvey 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