

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

Decided and Entered: December 6, 2018

526407

In the Matter of ANTONIO
HARRIS,
Appellant,

v

MEMORANDUM AND ORDER

DONALD VENETTOZZI, as Acting
Director of Special Housing
and Inmate Disciplinary
Programs,
Respondent.

Calendar Date: October 26, 2018

Before: Garry, P.J., McCarthy, Aarons, Rumsey and Pritzker, JJ.

Antonio Harris, Gowanda, appellant pro se.

Barbara D. Underwood, Attorney General, Albany (Julie M. Sheridan of counsel), for respondent.

Appeal from a judgment of the Supreme Court (O'Connor, J.), entered March 2, 2018 in Albany County, which dismissed petitioner's application, in a proceeding pursuant to CPLR article 78, to review a determination of the Commissioner of Corrections and Community Supervision finding petitioner guilty of violating certain prison disciplinary rules.

As the result of an investigation during which petitioner's telephone calls were monitored, correction officials discovered that petitioner solicited a female visitor to bring sexual enhancement drugs into the correctional

facility. The visitor disclosed this information to an investigator, but did not actually bring the drugs into the facility. Thereafter, petitioner was charged in a misbehavior report with conspiring to introduce drugs into the correctional facility, solicitation, violating visiting room procedures and violating telephone procedures. Following a tier III disciplinary hearing, he was found guilty of all of the charges except for the drug charge. The determination was later affirmed on administrative appeal, and petitioner commenced this CPLR article 78 proceeding challenging it. Following service of respondent's answer, Supreme Court dismissed the petition, and petitioner appeals.

Petitioner contends that he was improperly denied documentary evidence consisting of the unusual incident report, to/from reports, investigative reports, telephone tapes and other evidence to be used against him. He further asserts that his employee assistant was inadequate for failing to obtain these items. Inasmuch as petitioner did not request any documentary evidence at the hearing or object to his assistant's failure to produce the same, he has not preserved these claims for judicial review (see Matter of Rodriguez v Annucci, 136 AD3d 1083, 1084 [2016]; Matter of Abrams v Fischer, 109 AD3d 1030, 1031 [2013]).¹ We note that petitioner was provided with some documentary evidence, as the preliminary unusual incident report was read into the record and the tapes of two recorded telephone conversations were played in petitioner's presence during the disciplinary hearing. Accordingly, Supreme Court properly dismissed the petition.

Garry, P.J., McCarthy, Aarons, Rumsey and Pritzker, JJ., concur.

¹ Petitioner's claim of inadequate employee assistance is unpreserved for the additional reason that he did not raise it in his administrative appeal (see Matter of Rico v Fischer, 112 AD3d 1249, 1250 [2013]).

ORDERED that the judgment is affirmed, without costs.

ENTER:

A handwritten signature in black ink, reading "Robert D. Mayberger". The signature is written in a cursive style with a large, prominent "R" and "M".

Robert D. Mayberger
Clerk of the Court