

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

Decided and Entered: July 30, 2020

529964

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In the Matter of JALAH  
WIMBERLY,  
Petitioner,

v

MEMORANDUM AND JUDGMENT

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

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Calendar Date: June 26, 2020

Before: Egan Jr., J.P., Lynch, Aarons, Pritzker and  
Colangelo, JJ.

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Danielle Neroni Reilly, Albany, for petitioner.

Letitia James, Attorney General, Albany (Martin A. Hotvet  
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.

Petitioner was charged in a misbehavior report with  
engaging in or encouraging a sexual act, violating visitation  
procedures and creating a disturbance. The charges stemmed from  
an incident in the visitation room in which a correction officer  
observed petitioner's wife rubbing petitioner's penis.

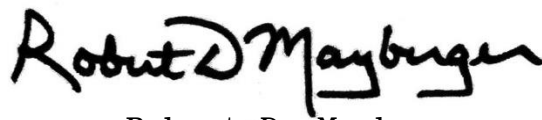
Following a tier III disciplinary hearing, petitioner was found guilty as charged and that determination was upheld on administrative appeal. This CPLR article 78 proceeding followed.

We confirm. The detailed misbehavior report – standing alone – provides substantial evidence to support the determination (see Matter of Espinal v Annucci, 175 AD3d 1696, 1696 [2019]; Matter of Green v Kirkpatrick, 167 AD3d 1138, 1139 [2018], lv denied 32 NY3d 919 [2019]). We reject petitioner's contention that he was improperly denied a video recording of the visitation room. The Hearing Officer requested the recording and was advised by facility staff that the video did not exist (see Matter of Lashway v Keyser, 178 AD3d 1224, 1225 [2019]; Matter of Mullins v Annucci, 177 AD3d 1061, 1061 [2019]). As to petitioner's claim that he was improperly denied the right to call witnesses, the record reflects that, although petitioner initially requested the testimony of an inmate witness, he later informed the Hearing Officer that he no longer wanted the witness's testimony and had no further evidence to present. Accordingly, this claim was waived (see Matter of Brown v Venettozzi, 162 AD3d 1434, 1435 [2018]; Matter of Cornwall v Fischer, 74 AD3d 1507, 1509 [2010]). Petitioner's remaining claims have been considered and found to be without merit.

Egan Jr., J.P., Lynch, Aarons, Pritzker and Colangelo, 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