

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

Decided and Entered: January 21, 2021

531902

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In the Matter of ROBERT LOGAN,  
Petitioner,

v

LYNN J. LILLEY, as  
Superintendent of  
Woodbourne Correctional  
Facility,  
Respondent.

MEMORANDUM AND JUDGMENT

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Calendar Date: January 4, 2021

Before: Garry, P.J., Clark, Mulvey, Pritzker and Reynolds  
Fitzgerald, JJ.

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Robert Logan, Woodbourne, petitioner pro se.

Letitia James, Attorney General, Albany (Kate H. Nepveu 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 Sullivan  
County) to review a determination of respondent finding  
petitioner guilty of violating certain prison disciplinary  
rules.

After petitioner was told to leave the computer lab area  
by a female correction officer, he winked at the officer.  
Petitioner then winked at the officer again and smiled when he  
was leaving the area, prompting the officer to inquire as to  
whether there was something wrong with his eye. Petitioner said

no and left the area. A few days later, petitioner approached the officer and stated, "I just wanted you to know that there is nothing wrong with my eye." Petitioner then smiled and walked away. As a result, petitioner was charged in a misbehavior report with harassment and stalking. Following a tier II disciplinary hearing, petitioner was found guilty as charged. The determination was affirmed on administrative appeal, and petitioner commenced this CPLR article 78 proceeding.

The Attorney General has advised this Court that the finding of guilt as to the charge of stalking has since been administratively reversed and that all references to that charge have been expunged from petitioner's institutional record. Inasmuch as petitioner has received all the relief to which he is entitled and is no longer aggrieved as to that charge, that part of the proceeding challenging the stalking charge is dismissed as moot (see Matter of Nunez v Barkley, 262 AD2d 909, 909 [1999]).<sup>1</sup>

As to the remaining charge of harassment, the misbehavior report and petitioner's testimony at the hearing provide substantial evidence to support the determination of guilt (see Matter of Afrika v Blackman, 149 AD3d 1369, 1369-1370 [2017]; Matter of Yven Chen v Venettozzi, 141 AD3d 1072, 1073 [2016]). Petitioner admitted to the conduct that was the basis for the charge and his exculpatory explanations for his behavior created a credibility issue for the Hearing Officer to resolve (see Matter of Briggs v Lilley, 181 AD3d 1088, 1089 [2020]; Matter of Sierra v Venettozzi, 153 AD3d 1548, 1549 [2017]). Petitioner's remaining contentions, including his challenge to the adequacy of the hearing transcript, have been reviewed and are without merit.

Garry, P.J., Clark, Mulvey, Pritzker and Reynolds  
Fitzgerald, J.J., concur.

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<sup>1</sup> The matter need not be remitted for a redetermination of the penalty, inasmuch as petitioner has already served the penalty and no loss of good time was imposed (see Matter of Sylvester v Venettozzi, 175 AD3d 783, 784 [2019]).

ADJUDGED that the part of the petition challenging the determination finding petitioner guilty of stalking is dismissed, as moot, without costs.

ADJUDGED that the part of the determination finding petitioner guilty of harassment is confirmed, without costs, and petition dismissed to that extent.

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