

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

Decided and Entered: November 10, 2021

533086

In the Matter of JAMEL STEVENS,
Petitioner,

v

MICHELLE OSCAR, as Correction
Officer at Sing Sing
Correctional Facility,
et al.,
Respondents.

MEMORANDUM AND JUDGMENT

Calendar Date: October 8, 2021

Before: Garry, P.J., Clark, Aarons, Reynolds Fitzgerald and
Colangelo, JJ.

Jamel Stevens, Ossining, petitioner pro se.

Letitia James, Attorney General, Albany (Kate H. Nepveu 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 Superintendent
of Sing Sing Correctional Facility finding petitioner guilty of
violating certain prison disciplinary rules.

Petitioner was charged in a misbehavior report with
obstructing visibility, refusing a direct order and interfering
with an employee. According to the report, a correction officer
on rounds observed that bedsheets were being used to obstruct
visibility into petitioner's cell. The officer stopped and

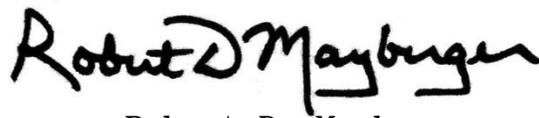
ordered petitioner to remove the sheets. On her next rounds, the officer observed that the bedsheets were still obstructing the view into petitioner's cell and again ordered petitioner to remove them. After petitioner failed to comply, the officer issued the misbehavior report. Following a tier II disciplinary hearing, petitioner was found guilty as charged. That determination was affirmed on administrative appeal, and this CPLR article 78 proceeding ensued.

We confirm. Contrary to petitioner's contention, the incident involved a "danger to life, health, security or property," warranting the issuance of the misbehavior report (7 NYCRR 251-3.1 [a]). The misbehavior report and hearing testimony provide substantial evidence to support the determination of guilt (see Matter of Beltre v Rodriguez, 185 AD3d 1370, 1370 [2020]; Matter of Woodward v Annucci, 175 AD3d 785, 785-786 [2019]). Although petitioner testified that he had no recollection of the incident, the author of the misbehavior report testified that petitioner was awake and responsive when she ordered him to remove the bedsheets, creating a credibility issue for the Hearing Officer to resolve (see Matter of McClary v Annucci, 189 AD3d 1812, 1813 [2020], lv denied 37 NY3d 905 [2021]; Matter of Snyder v Annucci, 188 AD3d 1346, 1347 [2020]). Petitioner's remaining claims, to the extent they are properly before us, have been considered and found to be without merit.

Garry, P.J., Clark, Aarons, Reynolds Fitzgerald 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