

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

Decided and Entered: September 30, 2021

533177

In the Matter of MICHAEL
ANTINUCHE,
Petitioner,

v

MEMORANDUM AND JUDGMENT

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

Calendar Date: September 3, 2021

Before: Lynch, J.P., Aarons, Pritzker, Reynolds Fitzgerald and
Colangelo, JJ.

Michael Antinuche, Fallsburg, petitioner pro se.

Letitia James, Attorney General, Albany (Kate H. Nepveu of
counsel), for respondent.

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 the Commissioner of
Corrections and Community Supervision finding petitioner guilty
of violating certain prison disciplinary rules.

During the course of an investigation, correction
officials received confidential information indicating that
petitioner had placed a razor blade in a facility recycling bin
because he was conspiring with another incarcerated individual

to assault a third incarcerated individual in the housing unit regarding a debt owed. A subsequent search of the recycling bins revealed a small piece of folded tissue paper that contained a razor blade. As a result, petitioner was charged in a misbehavior report with conspiring to assault an incarcerated individual, possessing a weapon and engaging in violent conduct involving the threat of violence. Following a tier III disciplinary hearing, petitioner was found guilty of the charges. That determination was upheld upon administrative appeal. This CPLR article 78 proceeding ensued.

We confirm. The misbehavior report, the testimony of its author and the detailed confidential testimony and information provide substantial evidence supporting the finding of guilt (see Matter of Johansel v Annucci, 155 AD3d 1147, 1148 [2017]; Matter of Chandler v Annucci, 135 AD3d 1258, 1259 [2016]; Matter of Baez v Bellnier, 131 AD3d 771, 771 [2015]; Matter of Pompey v Prack, 128 AD3d 1251, 1252 [2015]). Contrary to petitioner's contention, the Hearing Officer's confidential interviews with a confidential informant and the correction officer who authored the misbehavior report and conducted the investigation was sufficiently detailed and specific to independently assess the reliability of the confidential information (see Matter of Williams v Fischer, 18 NY3d 888, 890 [2012]; Matter of Ortiz v Annucci, 163 AD3d 1383, 1384 [2018]; Matter of DeJesus v Venettozzi, 145 AD3d 1275, 1276 [2016], lv denied 29 NY3d 908 [2017]). Furthermore, "there was no reason to think that the informant was motivated by a promise of reward from the prison officials or a personal vendetta against petitioner" (Matter of Williams v Fischer, 18 NY3d at 890; see Matter of Carbuccia v Venettozzi, 194 AD3d 1179, 1180 [2021]).

With regard to petitioner's procedural challenges, the misbehavior report was sufficiently detailed to provide him with adequate notice of the charges so as to enable him to prepare a defense (see 7 NYCRR 251-3.1 [c]). "Inasmuch as the misbehavior report was the result of an ongoing investigation and based upon confidential information, the lack of specific dates and times, as well as the withholding of the names of the other [incarcerated individuals] involved, was acceptable" (Matter of

Ortiz v Annucci, 163 AD3d at 1384 [internal quotation marks and citations omitted]; see Matter of Willacy v Fischer, 67 AD3d 1099, 1100 [2009]). We also reject petitioner's contention that he was denied the right to call the confidential informant as a witness, as he does not have a right to confront or cross-examine the confidential informant (see Matter of Heard v Annucci, 155 AD3d 1166, 1167 [2017]; Matter of Tulloch v Fischer, 90 AD3d 1370, 1371 [2011]; see also Matter of Laureano v Kuhlmann, 75 NY2d 141, 147-148 [1990]). We have considered petitioner's remaining contentions and find them to be either unreserved or without merit.

Lynch, J.P., Aarons, Pritzker, 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