

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

Decided and Entered: May 12, 2022

532918

In the Matter of DAVID M.
LORET,
Petitioner,

v

MEMORANDUM AND JUDGMENT

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

Calendar Date: November 12, 2021

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

David M. Loret, Dannemora, 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 Albany
County) to review a determination of the Commissioner of
Corrections and Community Supervision finding petitioner guilty
of violating certain prison disciplinary rules.

Petitioner was charged in a misbehavior report with
violating facility correspondence procedures, harassment,
possessing an employee's personal information, possessing
contraband and possessing money. According to the misbehavior

report, a correction officer received a manilla envelope addressed to her purportedly from the Monroe County Bar Association, although its return address was incorrect. The letter initially appeared to be from a legal organization soliciting business, but it turned into a personal communication on the second page and contained a \$55 money order. Two smaller enclosed envelopes contained a greeting card expressing apologies and requesting forgiveness, along with an empty peanut M & M candy wrapper, and a personal letter containing inappropriate content that referred to the correction officer as "angry lady." The misbehavior report indicates that the correction officer had previously reprimanded petitioner for trying to give her a package of peanut M & M candy and that petitioner had responded by calling her an "angry lady."

Following a tier III disciplinary hearing, petitioner was found guilty of all charges. Upon administrative appeal, that determination was modified by dismissing the charges of possessing contraband and possessing money, but was otherwise affirmed. This CPLR article 78 proceeding ensued.

Initially, respondent concedes, and our review of the record confirms, that the part of the determination finding petitioner guilty of possessing an employee's personal information is not supported by substantial evidence and must be annulled. Because the penalty included a recommended loss of good time, the matter must be remitted for a redetermination of the penalty imposed on the remaining charges (see Matter of Carbuccia v Venettozzi, 194 AD3d 1179, 1180 [2021]).

As for the remaining charges, we find that the misbehavior report, related documentation and testimony at the hearing provide substantial evidence to support that part of the determination finding petitioner guilty of violating facility correspondence procedures and harassment (see Matter of Washington v Venettozzi, 186 AD3d 1866, 1867 [2020]; Matter of Williams v Keyser, 171 AD3d 1334, 1335 [2019]; Matter of Young v Keyser, 136 AD3d 1084, 1085 [2016]). We are unpersuaded by petitioner's contention that the misbehavior report is based upon generalities and conclusory allegations. The information


regarding the correction officer's prior reprimand of petitioner for attempting to give her candy and his purported response created a credibility issue for the Hearing Officer to resolve (see Matter of Partak v Venettozzi, 175 AD3d 1633, 1634 [2019]).

We also find without merit petitioner's contention that he was improperly denied a witness and documentary evidence, which were requested to establish the correction officer's character. As set forth by the Hearing Officer at the hearing and on the refusal forms, neither testimony from an incarcerated individual regarding his prior unrelated interaction with the correction officer nor the correction officer's disciplinary record and oath of office were relevant to the charges (see Matter of Bonds v Annucci, 166 AD3d 1250, 1251 [2018]; Matter of Barca v Fischer, 80 AD3d 1038, 1038 [2011], lv denied 16 NY3d 711 [2011]; Matter of Caraway v Herbert, 285 AD2d 778, 778–779 [2001]). We have reviewed petitioner's remaining contentions, including his challenge to the hearing extension and his claim that the Hearing Officer was biased and, to the extent preserved, find them to be without merit.

Clark, J.P., Aarons, Pritzker, Reynolds Fitzgerald and Colangelo, JJ., concur.

ADJUDGED that the determination is modified, without costs, by annulling so much thereof as found petitioner guilty of possessing an employee's personal information; petition granted to that extent and the Commissioner of Corrections and Community Supervision is directed to expunge all references to that charge from petitioner's institutional record, and matter remitted to respondent for an administrative redetermination of the penalty on the remaining violations; and, as so modified, confirmed.

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