

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

Decided and Entered: January 27, 2022

533119

In the Matter of EARL WATSON,
Petitioner,

v

MEMORANDUM AND JUDGMENT

J. WERLAU, as Shawangunk
Correctional Facility
Captain, et al.,
Respondents.

Calendar Date: December 30, 2021

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

Earl Watson, Dannemora, 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 Ulster
County) to review a determination of the Superintendent of
Shawangunk Correctional Facility finding petitioner guilty of
violating certain prison disciplinary rules.

Petitioner was charged in a misbehavior report with
refusing a direct order, creating a disturbance and being out of
place. According to the misbehavior report, a correction
officer gave petitioner a direct order to lock in his cell
because recreation time was over. Petitioner argued with the
correction officer that he was allowed longer recreation time.

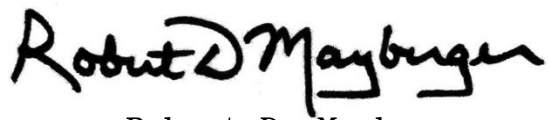
When the correction officer repeated the direct order to petitioner to lock in his cell, petitioner became louder and other inmates started to pay attention to the incident. Another correction officer became involved and walked petitioner to his cell. Following a tier II disciplinary hearing, petitioner was found guilty of all charges. Other than a modification of the penalty imposed, the determination of guilt was affirmed upon administrative appeal. This CPLR article 78 proceeding ensued.

Contrary to petitioner's contention, the misbehavior report and testimony at the hearing provide substantial evidence to support the determination of guilt (see Matter of Urena v Keyser, 197 AD3d 1452, 1452 [2021]; Matter of Snyder v Annucci, 188 AD3d 1346, 1347 [2020]; Matter of Brown v Venettozzi, 162 AD3d 1434, 1435 [2018]). To the extent that petitioner asserts that his conduct was justified because he was entitled to more recreation time, we note that petitioner is not free to disregard a direct order, even if he believes the order was wrong or unauthorized (see Matter of Anselmo v Annucci, 173 AD3d 1589, 1589 [2019]; Matter of Credell v Hurt, 167 AD3d 1113, 1115 [2018], lv denied 32 NY3d 919 [2019]). Petitioner's remaining contentions are unpreserved as they were not raised upon administrative appeal (see Matter of Urena v Keyser, 197 AD3d at 1452; Matter of Davis v Lempke, 148 AD3d 1366, 1367 [2017]).

Garry, P.J., Egan Jr., Lynch, 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