

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

Decided and Entered: March 10, 2022

533640

In the Matter of DAVID RAMOS,
Petitioner,

v

ANTHONY J. ANNUCCI, as Acting
Commissioner of Corrections
and Community Supervision,
et al.,
Respondents.

MEMORANDUM AND JUDGMENT

Calendar Date: February 4, 2022

Before: Egan Jr., J.P., Lynch, Aarons, Reynolds Fitzgerald and
Fisher, JJ.

David Ramos, Coxsackie, 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 Commissioner of
Corrections and Community Supervision finding petitioner guilty
of violating certain prison disciplinary rules.

During a random search of petitioner's cell, a correction
officer discovered on the top lip of petitioner's locker an ice
pick-type weapon. The weapon consisted of a sharp piece of
metal with cloth wrapped around the handle and measured 4½
inches by 2 inches. As a result, petitioner was charged in a

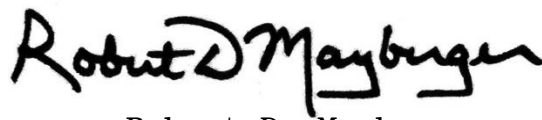
misbehavior report with possessing a weapon and possessing an altered item. Following a tier III disciplinary hearing, he was found guilty of the charges, and the determination was affirmed on administrative appeal. This CPLR article 78 proceeding ensued.

We confirm. The misbehavior report and related documentation, together with the hearing testimony, including the testimony of the correction officer who performed the search, provide substantial evidence supporting the determination of guilt (see Matter of Rodari v Venettozzi, 186 AD3d 1860, 1861 [2020]; Matter of Dowling v Venettozzi, 177 AD3d 1063, 1063 [2019], lv denied 35 NY3d 901 [2020]; Matter of Sawyer v Annucci, 140 AD3d 1499, 1500 [2016]; see also 7 NYCRR 270.2 [B] [14] [i]; Matter of Freeman v Annucci, 151 AD3d 1509, 1510 [2017]). "The fact that the weapon was found in an area within petitioner's control, even if not exclusive, supports the inference of possession" (Matter of Nix v Venettozzi, 196 AD3d 933, 933 [2021] [internal quotation marks and citations omitted]), and it was petitioner's "'own responsibility to make sure that no unauthorized items were present in his cell'" (Matter of Ballard v Annucci, 170 AD3d 1298, 1300 [2019], quoting Matter of Johnson v Barkley, 260 AD2d 882, 882-883 [1999]). Petitioner's contention that he was unaware of the weapon's presence in his cell presented a credibility issue for the Hearing Officer to resolve (see Matter of Dowling v Venettozzi, 177 AD3d at 1064; Matter of Sawyer v Annucci, 140 AD3d at 1499). To the extent that petitioner's remaining contentions are properly before us, they have been considered and found to be without merit.

Egan Jr., J.P., Lynch, Aarons, Reynolds Fitzgerald and Fisher, 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