

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

Decided and Entered: December 8, 2022

534692

In the Matter of RAMON ALMONTE,
Petitioner,

v

MEMORANDUM AND JUDGMENT

ANTHONY J. ANNUCCI, as Acting
Commissioner of Corrections
and Community Supervision,
Respondent.

Calendar Date: November 10, 2022

Before: Aarons, J.P., Reynolds Fitzgerald, Ceresia, Fisher and
McShan, JJ.

Ramon Almonte, Gouverneur, 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 respondent finding
petitioner guilty of violating a prison disciplinary rule.

Petitioner, an incarcerated individual, was observed
attempting to pass an object under a door within the
correctional facility. A correction officer intercepted the
object, which was an envelope containing a handwritten note that
the correction officer perceived to be an attempt to distribute
drugs within the facility. As a result of the incident,
petitioner was charged with conspiring to introduce drugs into

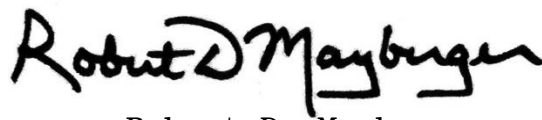
the facility. Following a tier III disciplinary hearing, petitioner was found guilty of the charge. Upon administrative review, the determination of guilty was affirmed, and this CPLR article 78 proceeding ensued.

We confirm. The misbehavior report and documentary evidence – including the confiscated note, as well as the memorandum written by the correction officer who discovered that note – provide substantial evidence to support the determination of guilt (*see Matter of Rose v Lilley*, 205 AD3d 1187, 1188 [3d Dept 2022]; *Matter of Adams v Annucci*, 160 AD3d 1331, 1331-1332 [3d Dept 2018]; *Matter of Smart v New York State Dept. of Correctional Servs.*, 75 AD3d 1017, 1017-1018 [3d Dept 2010]; *see also* 7 NYCRR 270.2 [B] [14] [xxiv]). Petitioner's exculpatory statements and denial of guilt presented credibility issues for resolution by the Hearing Officer (*see e.g. Matter of Barnes v Venettozzi*, 207 AD3d 969, 970 [3d Dept 2022]). Contrary to petitioner's contention, we conclude, based upon our review of the record, "that the hearing was conducted in a fair and impartial manner and that the determination of guilt flowed from the evidence presented and not from any alleged bias on the part of the Hearing Officer" (*Matter of Manwaring v Rodriguez*, 205 AD3d 1200, 1201 [3d Dept 2022] [internal quotation marks and citation omitted]). To the extent that petitioner's remaining contentions are properly before us, they have been considered and found to lack merit.

Aarons, J.P., Reynolds Fitzgerald, Ceresia, Fisher and McShan, 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 style with a large, prominent "R" at the beginning.

Robert D. Mayberger
Clerk of the Court