

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

Decided and Entered: November 3, 2022

535308

---

In the Matter of ROBERT  
D'ANDREA,  
Petitioner,

v

MEMORANDUM AND JUDGMENT

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

---

Calendar Date: October 7, 2022

Before: Garry, P.J., Clark, Aarons, Reynolds Fitzgerald and  
Ceresia, JJ.

---

Robert D'Andrea, Beacon, 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 Superintendent  
of Fishkill Correctional Facility finding petitioner guilty of  
violating a prison disciplinary rule.

Petitioner, an incarcerated individual, was discovered in  
the facility library lying on the floor and unresponsive.  
Petitioner was subsequently transported to a regional medical  
unit where it was determined that petitioner was under the

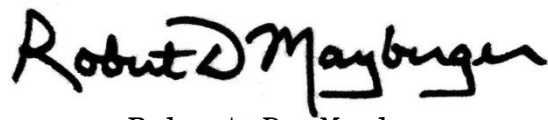
influence of an intoxicant. As a result, petitioner was charged in a misbehavior report with violating the disciplinary rule that prohibits the use of an intoxicant. Following a tier II disciplinary hearing, petitioner was found guilty of using an intoxicant, and that determination was affirmed upon administrative appeal. This CPLR article 78 proceeding ensued.

We confirm. The misbehavior report, related medical documentation and hearing testimony provide substantial evidence to support the determination finding petitioner guilty of using an intoxicant (*see Matter of Grate Annucci*, 152 AD3d 1127, 1127 [3d Dept 2017]; *Matter of Vargus v Annucci*, 147 AD3d 1124, 1124-1125 [3d Dept 2017]). "Moreover, the absence of positive urinalysis test results is not dispositive here" because the charge was based upon the observations set forth in the misbehavior report and not any scientific testing results (*Matter of Rodriguez v Superintendent of Ulster Corr. Facility*, 197 AD3d 1494, 1495 [3d Dept 2021] [internal quotation marks, brackets and citations omitted]; *see Matter of Simmons v Venettozzi*, 153 AD3d 1016, 1016 [3d Dept 2017]). Petitioner's denial that he used an intoxicant and contention that he was found unresponsive because he was assaulted presented credibility issues for resolution by the Hearing Officer (*see Matter of Meadows v Rockwood*, 198 AD3d 1174, 1174 [3d Dept 2021]; *Matter of Ball v Annucci*, 144 AD3d 1300, 1300 [3d Dept 2016]). To the extent that petitioner's remaining contentions are properly before us, they have been reviewed and lack merit.

Garry, P.J., Clark, Aarons, Reynolds Fitzgerald and Ceresia, 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, stylized initial "R".

Robert D. Mayberger  
Clerk of the Court