

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

Decided and Entered: May 23, 2024

CV-23-0793

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In the Matter of TYRONE PETERS,  
Petitioner,

v

MEMORANDUM AND JUDGMENT

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

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Calendar Date: April 19, 2024

Before: Garry, P.J., Pritzker, Lynch, Ceresia and Mackey, JJ.

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*Tyrone Peters*, Elmira, petitioner pro se.

*Letitia James*, Attorney General, Albany (*Kate H. Nepveu* of counsel), for respondent.

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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 certain prison disciplinary rules.

Petitioner, an incarcerated individual, was charged in a misbehavior report with making threats and engaging in violent conduct. According to the misbehavior report, a fight broke out in the prison yard, where petitioner, amidst approximately 174 other incarcerated individuals, was observed by a correction officer yelling, "[c]ut them f\*\*\*ing C.O.'s" and "[s]lice them f\*\*\*ing C.O.'s." At the conclusion of the tier III disciplinary hearing that followed, petitioner was found guilty of the charges. The

determination was upheld upon administrative review. This CPLR article 78 proceeding ensued, and we confirm.

As an initial matter, and "contrary to petitioner's contention, there is no indication that the transcript of the hearing was deliberately altered or that significant portions are missing such as to preclude meaningful review" (*Matter of Tigner v Rodriguez*, 196 AD3d 982, 982 [3d Dept 2021] [internal quotation marks and citations omitted]; see *Matter of Thousand v New York State Dept. of Corr. & Community Supervision*, 210 AD3d 1174, 1176 [3d Dept 2022]). Turning to the disciplinary determination, the detailed misbehavior report, together with the testimony of its author and other testimony offered at the hearing, provide substantial evidence to support the determination of guilt (see *Matter of Woodward v Annucci*, 175 AD3d 785, 785-786 [3d Dept 2019]; *Matter of Green v Kirkpatrick*, 165 AD3d 1375, 1376 [3d Dept 2018], *lv denied* 32 NY3d 919 [2019]; *Matter of Osborne v Venetozzi*, 141 AD3d 990, 991 [3d Dept 2016]). The contrary testimony of petitioner and his inmate witnesses, as well as petitioner's contention that the misbehavior report was retaliatory, presented credibility issues for the Hearing Officer to resolve (see *Matter of Hickson v Annucci*, 214 AD3d 1290, 1291 [3d Dept 2023]; *Matter of Woodward v Annucci*, 175 AD3d at 786; *Matter of Cosme v New York State Dept. of Corr. & Community Supervision*, 168 AD3d 1327, 1328 [3d Dept 2019]).

Petitioner also contends that he experienced prejudice when the Hearing Officer allegedly failed to provide him with a written copy of the disposition within 24 hours as required (see 7 NYCRR 254.7 [a] [2]). The Hearing Officer read the written disposition into the record at the conclusion of the hearing, and "[t]he deficiency was cured by petitioner's receipt of a copy of the written disposition during the pendency of the proceeding and he has not demonstrated that he was prejudiced" (*Matter of Hinton v Fischer*, 102 AD3d 1018, 1018-1019 [3d Dept 2013]; see *Matter of Eleby v New York State Dept. of Corr. and Community Supervision*, 224 AD3d 977, 978 [3d Dept 2024]). Finally, we are unpersuaded by petitioner's contention that the Hearing Officer improperly denied petitioner access to a video of the incident. The Hearing Officer requested the recording and was advised by facility staff that the incident was not captured on video (see *Matter of Gentry v Annucci*, 217 AD3d 1569, 1570 [4th Dept 2023]). Notwithstanding this vague explanation, in light of the testimony adduced at the hearing and petitioner's assertions as to what may have been gleaned from the video had it been available, we find that it would have been of little probative value here (compare *Matter of Headley v Annucci*, 205 AD3d 1189, 1192 [3d Dept 2022, Lynch, J., dissenting]; *Matter of Caraway v Annucci*, 190 AD3d 1198, 1201-1202 [3d Dept 2021,

Garry, P.J., dissenting]; *Matter of Anselmo v Annucci*, 176 AD3d 1283, 1287 [3d Dept 2019, Garry, P.J., dissenting]). We have considered petitioner's remaining arguments, to the extent that they are properly before us, and find them to be unavailing.

Garry, P.J., Pritzker, Lynch, Ceresia and Mackey, 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