

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

Decided and Entered: June 13, 2024

CV-23-1571

In the Matter of PABLO
VALLECILLO,
Petitioner,

v

MEMORANDUM AND JUDGMENT

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

Calendar Date: May 24, 2024

Before: Garry, P.J., Egan Jr., Aarons, Reynolds Fitzgerald and McShan, JJ.

Pablo Vallecillo, Wallkill, 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 Ulster County) to review a determination of respondent finding petitioner guilty of violating certain prison disciplinary rules.

After observing what smelled like marijuana smoke coming from the cell of petitioner, an incarcerated individual, petitioner was pat-frisked and later searched, which led to the discovery of 9.2 grams of a green leafy substance, paper soaked in an unknown liquid and five blue pills with an M30 marking on them. An investigator identified the pills as those resembling Oxycodone, and, upon laboratory testing, it was determined that the pills contained fentanyl, an opiate. As a result, petitioner was charged in a

misbehavior report with drug possession and smuggling. Following a tier III disciplinary hearing, petitioner was found guilty of the charges. Upon administrative review, the determination was affirmed, and this CPLR article 78 proceeding ensued.

We confirm. The misbehavior report and related documentation, including the positive test results, together with the hearing testimony, provide substantial evidence supporting the determination of guilt (*see Matter of Robinson v Annucci*, 197 AD3d 1453, 1454 [3d Dept 2021]; *Matter of Horton v Annucci*, 163 AD3d 1385, 1385 [3d Dept 2018]). Petitioner has also not demonstrated how the inclusion in the record of a May 2022 "evidence card," which was not relied upon by the Hearing Officer in rendering the determination of guilt, prejudiced him in any way or otherwise affected the determination. Petitioner's remaining contentions, including his claim that he did not have adequate written notice of the rule prohibiting drug possession, are either unpreserved for our review or have been considered and found to be without merit.

Garry, P.J., Egan Jr., Aarons, Reynolds Fitzgerald 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, slightly slanted style.

Robert D. Mayberger
Clerk of the Court