

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

Decided and Entered: November 27, 2024

CV-23-1934

In the Matter of TERELL VIERA,
Petitioner,

v

MEMORANDUM AND JUDGMENT

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

Calendar Date: November 8, 2024

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

Terell Viera, Malone, 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 certain prison disciplinary rules.

Petitioner, an incarcerated individual, was subjected to a pat frisk and ensuing authorized search, during which he admitted to possessing K-2 and surrendered a bag containing seven paper bindles and a cellophane bag of brown leafy substance as well as seven pieces of orange film positively identified by medical staff to be buprenorphine. As a result of this incident, petitioner was charged in a misbehavior report with possessing drugs, drug distribution and possessing contraband. Following a tier III disciplinary hearing, a Hearing Officer found petitioner not guilty of distributing drugs and guilty of

possessing contraband and possessing drugs. The determination was affirmed on administrative review, and this CPLR article 78 proceeding ensued.

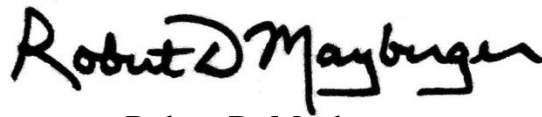
We confirm. "Initially, because petitioner pleaded guilty to the charge of possessing contraband alleged in the . . . misbehavior report, he is precluded from challenging the sufficiency of the evidence supporting that part of the determination finding him guilty of that charge" (*Matter of Mena v Gutwein*, 216 AD3d 1384, 1385 [3d Dept 2023] [citation omitted], *lv denied* 40 NY3d 906 [2023]; *see Matter of Miller v Rodriguez*, 215 AD3d 1156, 1157 [3d Dept 2023]). As for the remaining charge of drug possession, the misbehavior report and related documentation, together with the hearing testimony, provide substantial evidence to support the determination of guilt (*see Matter of Wiggins v Venettozzi*, 203 AD3d 1362, 1363 [3d Dept 2022]; *Matter of Robinson v Annucci*, 197 AD3d 1453, 1454 [3d Dept 2021]). Petitioner's claim that the strips were not properly drug tested lacks merit, as the record establishes that the facility nurse visually identified the contraband as buprenorphine, and, therefore, further drug testing was unnecessary (*see* 7 NYCRR 1010.4 [d], [e]; *Matter of Wiggins v Venettozzi*, 203 AD3d at 1363).

"Turning to petitioner's procedural contentions, the hearing was commenced in a timely manner and was completed in accordance with proper extension requests" (*Matter of Mena v Gutwein*, 216 AD3d at 1385 [internal quotation marks and citations omitted]). In any event, compliance with the regulatory time limits is directory only, and there is no indication of any substantive prejudice to petitioner resulting from the delay (*see id.*; *Matter of Anselmo v Annucci*, 176 AD3d 1283, 1284 [3d Dept 2019]). To the extent that petitioner's remaining contentions are properly before us, including his claim that he received inadequate assistance, they have been considered and found to be lacking in merit.

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