

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

Decided and Entered: December 5, 2024

CV-24-0247

In the Matter of JOSEPH
PLEASANT,
Petitioner,
v

MEMORANDUM AND JUDGMENT

JOSHUA SHOPE, as Acting Director
of Special Housing and Inmate
Disciplinary Programs.
Respondent.

Calendar Date: November 8, 2024

Before: Egan Jr., J.P., Clark, Lynch, Reynolds Fitzgerald and Fisher, JJ.

Joseph Pleasant, Auburn, 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 the Acting Commissioner of Corrections and Community Supervision finding petitioner guilty of violating certain prison disciplinary rules.

Petitioner, an incarcerated individual, was charged in a misbehavior report with violent conduct, assault on an incarcerated individual, fighting and bribery/extortion. Following a tier III disciplinary hearing, petitioner was found guilty as charged. The determination was upheld upon administrative appeal, and this CPLR article 78 proceeding ensued.

Initially, respondent concedes, and we agree, that substantial evidence does not support the part of the determination finding petitioner guilty of fighting and, thus, we annul that part of the determination (*see Matter of Sumter v Annucci*, 168 AD3d 1306, 1306 [3d Dept 2019]; *Matter of Mears v Venettozzi*, 150 AD3d 1498, 1499 [3d Dept 2017], *lv denied* 30 NY3d 905 [2017]). As no loss of good time was imposed and petitioner has already served the penalty, the matter need not be remitted for a reassessment of the penalty (*see Matter of Wright v Annucci*, 190 AD3d 1249, 1249 [3d Dept 2021]; *Matter of White v Annucci*, 169 AD3d 1326, 1327 [3d Dept 2019], *lv dismissed* 33 NY3d 1048 [2019], *lv denied* 33 NY3d 908 [2019]). Upon that same basis, petitioner's challenge to the severity of the penalty has been rendered moot (*see Matter of Clark v Jordan*, 212 AD3d 976, 979 [3d Dept 2023]). As to the remaining charges, the misbehavior report, unusual incident report, documentary evidence and the hearing testimony – including the confidential testimony and documentation considered by the Hearing Officer in camera – provide substantial evidence to support the determination finding petitioner guilty of violent conduct, assault on an incarcerated individual and bribery/extortion (*see Matter of Abdullah v New York State Dept. of Corr. & Community Supervision*, 222 AD3d 1095, 1095 [3d Dept 2023]; *Matter of Lundy v Annucci*, 219 AD3d 1622, 1622 [3d Dept 2023]; *Matter of Ketchmore v Annucci*, 199 AD3d 1150, 1150 [3d Dept 2021]). Any conflicting testimony or evidence was not dispositive and merely raised credibility issues for the Hearing Officer to resolve (*see Matter of Lightner v Venettozzi*, 197 AD3d 1448, 1448 [3d Dept 2021]; *Matter of Jones v Annucci*, 156 AD3d 1093, 1094 [3d Dept 2017]).

Petitioner's claim that the Hearing Officer did not properly assess the credibility of the confidential information, to the extent preserved for our review (*see Matter of Kelly v Mayes*, 210 AD3d 1168, 1169-1170 [3d Dept 2022]; *Matter of Lightner v Venettozzi*, 197 AD3d at 1449), is without merit. In this regard, the record reflects that the Hearing Officer's personal interview of the confidential source "was sufficiently thorough and specific . . . to assess[] the reliability and credibility of the confidential information provided" (*Matter of Headley v Annucci*, 205 AD3d 1189, 1189-1190 [3d Dept 2022]; *see Matter of Olivero v New York State Dept. of Corr. & Community Supervision*, 219 AD3d 1030, 1030 [3d Dept 2023]; *Matter of Cajigas v Rodriguez*, 214 AD3d 1293, 1293-1294 [3d Dept 2023]). We are further unpersuaded by petitioner's allegations of bias, as the Hearing Officer expressly considered petitioner's testimony and that of his witnesses, and an adverse ruling or credibility determination is not indicative of bias nor is there is any indication that the determination of guilt flowed from any alleged bias (*see Matter of Farley v Annucci*, 224 AD3d 969, 971 [3d Dept 2024]; *Matter of Williams v Kirkpatrick*, 153 AD3d 996, 996 [3d Dept 2017]).

Petitioner's contentions pertaining to employee assistance, timing of the hearing and notice of the charges are unpreserved for our review as they were not raised at the hearing when they could have been addressed (*see Matter of Wiggins v Venettozzi*, 203 AD3d 1362, 1362-1363 [3d Dept 2022]; *Matter of Diaz v Lee*, 171 AD3d 1382, 1382 [3d Dept 2019]; *Matter of Redmon v Smith*, 141 AD3d 1071, 1071 [3d Dept 2016]). His remaining arguments, to the extent properly before us, have been considered and found to be lacking in merit.

Egan Jr., J.P., Clark, Lynch, Reynolds Fitzgerald and Fisher, JJ., concur.

ADJUDGED that the determination is modified, without costs, by annulling so much thereof as found petitioner guilty of fighting; petition granted to that extent and respondent is directed to expunge all references to that charge from petitioner's institutional record; and, as so modified, confirmed.

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