

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

Decided and Entered: March 12, 2026

CV-24-1431

---

In the Matter of SOUVIK BASU,  
Petitioner,

v

ANTHONY RODRIGUEZ, as Acting  
Director of Special Housing and  
Inmate Disciplinary Programs,  
Respondent.

---

MEMORANDUM AND JUDGMENT

Calendar Date: February 6, 2026

Before: Clark, J.P., Ceresia, Fisher, McShan and Corcoran, JJ.

---

*Souvik Basu*, Woodbourne, 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 Commissioner of Corrections and Community Supervision finding petitioner guilty of violating certain prison disciplinary rules.

Petitioner was charged in two misbehavior reports with violations of various prison disciplinary rules stemming from an incident where a cell phone was heard ringing in the area of petitioner's cell. The first misbehavior report charged him with possession of an altered item, possession of contraband and smuggling. According to that misbehavior report, a search of petitioner's cell after the ringing sound was heard revealed five ear buds wrapped in cellophane hidden within false bottom insoles of a pair of black

boots, as well as a USB adapter, two more ear buds and two USB cables hidden within a false bottom of an oatmeal container. The second misbehavior report charged petitioner with possessing unauthorized valuables or property, smuggling and possession of contraband. According to that misbehavior report, while his cell was being searched, petitioner informed a correction officer that he possessed a cell phone in his buttocks area. Petitioner was thereafter strip frisked, which confirmed the presence of a cell phone. Following a combined tier III disciplinary hearing, petitioner was found guilty of all charges. Upon administrative appeal, that determination was modified by dismissing both charges of smuggling and the charge of possessing unauthorized valuables or property and reducing the penalty imposed, but was otherwise affirmed as to the findings of guilt on both charges of possessing contraband and possession of an altered item. Petitioner thereafter commenced this CPLR article 78 proceeding.

We confirm. The detailed misbehavior reports, unusual incident report and related documentation, photographs of the items and testimony at the hearing provide substantial evidence to support the determination of guilt (*see Matter of Leckie v Annucci*, 230 AD3d 1460, 1460 [3d Dept 2024]; *Matter of Rodari v Venettozzi*, 186 AD3d 1860, 1861 [3d Dept 2020]; *Matter of Silverstein v Bezio*, 65 AD3d 1424, 1424-1425 [3d Dept 2009]). The testimony of petitioner that he did not possess the items in question presented credibility issues for the Hearing Officer to resolve (*see Matter of Ruben v Martuscello*, 240 AD3d 1119, 1120 [3d Dept 2025]; *Matter of Waters v Annucci*, 225 AD3d 1029, 1030 [3d Dept 2024]). Any alleged minor inconsistencies between the unusual incident report and testimony also presented credibility determinations for the Hearing Officer to resolve (*see Matter of Wilson v McCarthy*, 236 AD3d 1172, 1173 [3d Dept 2025]; *Matter of Liggan v Annucci*, 171 AD3d 1325, 1326 [3d Dept 2019]; *Matter of Mason v Annucci*, 153 AD3d 1013, 1014 [3d Dept 2017]).

Turning to petitioner's procedural claims, we find petitioner's contention that he was improperly denied the right to observe the cell search unpersuasive. Notably, Department of Corrections and Community Supervision Directive No. 4910 "allows an inmate to observe a cell search when the inmate is removed from the cell for the search, unless a determination is rendered that such presence constitutes a safety or security risk" (*Matter of Alston v Annucci*, 153 AD3d 981, 982 [3d Dept 2017] [internal quotation marks and citations omitted]). Here, a correction officer testified that upon learning of petitioner's possession of a cell phone, protocol called for an immediate strip frisk as it was reasonable to believe that petitioner would be in possession of additional and possibly dangerous contraband. Under these circumstances, we find that there was a proper basis upon which to deny petitioner the right to observe the search, and

accordingly, his removal during the search was not in violation of Department of Corrections and Community Supervision Directive No. 4910 (*see Matter of Benitez v Annucci*, 172 AD3d 1855, 1855-1856 [3d Dept 2019]; *Matter of Santiago v Venettozzi*, 149 AD3d 1429, 1430 [3d Dept 2017]). Contrary to petitioner's contention, the chain of custody of the cell phone was appropriately established through the hearing testimony, misbehavior report and related documentation (*see Matter of Belgrave v Martuscello*, 243 AD3d 1106, 1108 [3d Dept 2025]; *Matter of Moorer v Annucci*, 230 AD3d 1454, 1456 [3d Dept 2024], *lv dismissed & denied* 42 NY3d 1093 [2025]; *Matter of Joseph v Polizzi*, 167 AD3d 1207, 1207 [3d Dept 2018], *lv denied* 33 NY3d 903 [2019]).

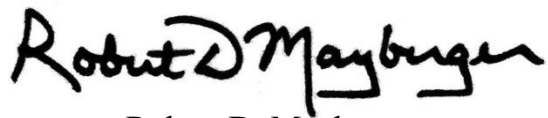
Petitioner's contention that the Hearing Officer should have been disqualified from presiding over the hearing was not raised at the hearing and is therefore unpreserved for our review (*see Matter of Harris v Collado*, 213 AD3d 1012, 1013 [3d Dept 2023]; *Matter of Headley v Annucci*, 150 AD3d 1513, 1514 [3d Dept 2017]). Nevertheless, we find this argument without merit as the record does not reflect that the Hearing Officer witnessed, participated in or investigated the subject incident (*see* 7 NYCRR 254.1; *Matter of Pierre v Annucci*, 219 AD3d 990, 991 [3d Dept 2023]; *Matter of Caldara v Annucci*, 160 AD3d 1173, 1174 [3d Dept 2018]). Petitioner's challenge regarding the failure of three incarcerated individual witnesses to testify is also unpreserved. Although petitioner noted during the hearing that he had not seen any paperwork regarding the requested witnesses' refusal to testify on his behalf, he was then shown the signed refusal to testify forms and stated "[o]kay, yeah, [I]ve seen it now." Petitioner thereafter failed to object or demand further inquiry into the basis for the incarcerated individuals' respective refusals to testify (*see Matter of Ballard v Annucci*, 168 AD3d 1319, 1320-1321 [3d Dept 2019]; *Matter of Ayuso v Venettozzi*, 159 AD3d 1208, 1209 [3d Dept 2018]). Nevertheless, this claim is also without merit as each of the witnesses who refused to testify signed a corresponding form, with each incarcerated individual indicating he had "no knowledge of [the] incident" (*see Matter of Lebron v New York State Dept. of Corr. & Community Supervision*, 200 AD3d 1385, 1386-1387 [3d Dept 2021]; *Matter of Randolph v Annucci*, 190 AD3d 1196, 1197 [3d Dept 2021]). Finally, "our review of the record reveals that the hearing, including the questioning of witnesses, was conducted in a fair and impartial manner and that the determination of guilt flowed from the evidence presented and not from any alleged bias on the part of the Hearing Officer" (*Matter of Pierre v Annucci*, 219 AD3d at 991-992; *see Matter of Clark v Jordan*, 212 AD3d 976, 979 [3d Dept 2023]).

Petitioner's remaining arguments, to the extent not specifically addressed, are either unpreserved or have been found to be lacking in merit.

Clark, J.P., Ceresia, Fisher, McShan and Corcoran, 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