

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

Decided and Entered: April 23, 2026

CV-24-1535

In the Matter of WILLIE
WILLIAMS,
Petitioner,
v

MEMORANDUM AND JUDGMENT

DANIEL F. MARTUSCELLO III, as
Commissioner of Corrections
and Community Supervision,
Respondent.

Calendar Date: March 26, 2026

Before: Aarons, J.P., Pritzker, Reynolds Fitzgerald, Fisher and McShan, JJ.

Willie Williams, Attica, petitioner pro se.

Letitia James, Attorney General, Albany (*Sean P. Mix* of counsel), for respondent.

Fisher, J.

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 a prison disciplinary rule.

A search of petitioner's cell resulted in the discovery of a cell phone, a pair of altered headphones and a homemade phone charger. Petitioner was charged in a misbehavior report with possession of contraband and, following a tier III disciplinary hearing, was found guilty as charged. This determination was affirmed upon administrative review, and petitioner commenced this CPLR article 78 proceeding.

We confirm. The misbehavior report, the unusual incident report and supporting documentation and the hearing testimony provide substantial evidence to support the finding of guilt (*see Matter of Belgrave v Martuscello*, 243 AD3d 1106, 1107 [3d Dept 2025]; *Matter of Dean v Martuscello*, 236 AD3d 1223, 1223 [3d Dept 2025]). Contrary to petitioner's contention, the misbehavior report, written by a correction officer who participated in the search, was properly endorsed by a sergeant who had personal knowledge of the facts providing a basis for the report (*see Matter of Shearer v Annucci*, 155 AD3d 1277, 1278 [3d Dept 2017]). Moreover, the fact that the other correction officer that was involved in the search did not endorse the misbehavior report "does not render such report defective," as the record demonstrates that "petitioner received a copy of the misbehavior report and the report adequately apprised him of the charges against him" (*Matter of Santana v Senkowski*, 269 AD2d 638, 638 [3d Dept 2000]). "In any event, petitioner has failed to demonstrate that any prejudice resulted from this technical error" (*id.* [citation omitted]; *see Matter of Jones v Annucci*, 166 AD3d 1174, 1176 [3d Dept 2018]). Further, any inconsistencies between the unusual incident report and the hearing testimony presented factual and credibility issues to be resolved by the Hearing Officer (*see Matter of Liggan v Annucci*, 171 AD3d 1325, 1326 [3d Dept 2019]).

We reject petitioner's contention that he was denied a fair and impartial hearing. There is no indication in the record that the Hearing Officer witnessed, participated in or investigated the subject incident (*see 7 NYCRR 254.1; Matter of Keitt v Annucci*, 231 AD3d 1455, 1456 [3d Dept 2024], *lv denied* 43 NY3d 906 [2025]), and her off-the-record confirmation that the misbehavior report was properly endorsed in response to petitioner's objection at the hearing constituted tangential involvement that did not warrant her disqualification (*see generally Matter of Caldara v Annucci*, 160 AD3d 1173, 1174 [3d Dept 2018]). Moreover, the record reveals that the hearing "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 990, 991-992 [3d Dept 2023]; *see Matter of Caldara v Annucci*, 160 AD3d at 1174).

Lastly, we are unpersuaded by petitioner's claim that he was improperly denied the ability to call certain witnesses on his behalf. There was no indication in the testimony or documentary evidence presented during the hearing that the requested correction officer was present for the search or otherwise involved in any part in the incident, therefore making his testimony irrelevant to the charges against petitioner (*see Matter of Barzee v Venettozzi*, 173 AD3d 1580, 1581 [3d Dept 2019]; *see also Matter of Thomas v Annucci*, 237 AD3d 1323, 1324 [3d Dept 2025]). Petitioner's contention that he was improperly

denied the ability to testify on his own behalf is not properly before us as it was not raised in the verified petition (*see Matter of Baxter v Annucci*, 244 AD3d 1380, 1381 [3d Dept 2025]; *Matter of Gonzalez v Annucci*, 171 AD3d 1265, 1266 [3d Dept 2019]). Petitioner's remaining contentions have been considered and found to be without merit.

Aarons, J.P., Pritzker, 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