

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

Decided and Entered: March 12, 2026

CV-24-1927

In the Matter of JESUS MATOS,
Petitioner,

v

MEMORANDUM AND JUDGMENT

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

Calendar Date: February 6, 2026

Before: Garry, P.J., Pritzker, Ceresia, Fisher and Corcoran, JJ.

Jesus Matos, Albion, petitioner pro se.

Letitia James, Attorney General, Buffalo (*Sarah L. Rosenbluth* 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.

Petitioner was charged in three misbehavior reports with violations of various prison disciplinary rules stemming from a series of incidents occurring during one evening in December 2023. The first misbehavior report charged him with refusing to obey a direct order, being out of place, interfering with an employee and assaulting a staff member. According to that misbehavior report, petitioner was repeatedly told by a correction officer to report to the mess hall after he was observed standing in front of a cell for an extended period of time. Petitioner refused to comply and entered a fighting

stance before striking the correction officer, at which time the correction officer used force to gain compliance. The second misbehavior report charged petitioner with refusing to obey a direct order, engaging in violent conduct and making threats. According to that misbehavior report, petitioner was brought to the facility emergency room following the earlier incident for examination and decontamination, at which time petitioner became agitated, made a profanity-laced statement and refused commands to lower his voice. Petitioner then reportedly stated "the cuffs are off now, what's up," before clenching his fists and advancing toward a correction officer, which necessitated use of force by correction officers again to gain compliance. The third misbehavior report charged petitioner with refusing to obey a direct order and engaging in violent conduct. According to the third misbehavior report, shortly after the second incident, petitioner refused to allow a correction officer to place him in mechanical restraints before once again taking a fighting stance requiring use of force to apply the restraints. Following a combined tier III disciplinary hearing on all three misbehavior reports, petitioner was found not guilty of assaulting a staff member as charged in the first misbehavior report and engaging in violent conduct as charged in the second misbehavior report, but guilty of the remaining charges. The determination was affirmed on administrative appeal, and this CPLR article 78 proceeding ensued.

We confirm. To the extent that petitioner challenges the determination of guilt,¹ the misbehavior reports, unusual incident report, use of force reports, hearing testimony and video recording of the third incident played at the hearing provide substantial evidence to support the determination of guilt (*see Matter of Heard v Rodriguez*, 240 AD3d 1109, 1109-1110 [3d Dept 2025]; *Matter of Keitt v Annucci*, 231 AD3d 1455, 1456 [3d Dept 2024], *lv denied* 43 NY3d 906 [2025]; *Matter of Alsina v Venettozzi*, 217 AD3d 1303, 1304 [3d Dept 2023]; *see also Matter of Peterkin v New York State Dept. of Corr. & Community Supervision*, 242 AD3d 26, 28 [3d Dept 2025]). Further, a "determination is not undermined by the fact that the author of the misbehavior report did not testify, as such testimony is not required" (*Matter of Cato v Martuscello*, 232 AD3d 1191, 1192 [3d Dept 2024]; *see Matter of Williams v Kirkpatrick*, 152 AD3d 855, 855-856 [3d Dept 2017]). Notably, petitioner never requested that the author of the third misbehavior report testify, and despite having initially requested the testimony of the author of the second misbehavior report, petitioner ultimately waived this request during the hearing. Accordingly, "in the absence of petitioner requesting such witness, the Hearing Officer was under no obligation to procure the author's testimony" (*Matter of*

¹ Petitioner only challenges the sufficiency of the evidence with respect to the charges contained in the second and third misbehavior reports.

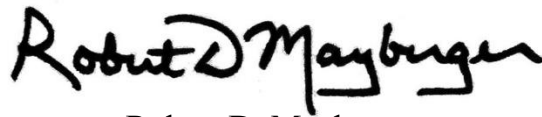
Cato v Martuscello, 232 AD3d at 1192; *see Matter of Hills v Annucci*, 225 AD3d 1008, 1009 [3d Dept 2024]).

Turning to petitioner's procedural arguments, we conclude that there was no error in the failure to provide petitioner with any existing photographs related to the incidents as petitioner never made a formal request for such photographs (*see Matter of Cargill v Goord*, 29 AD3d 1255, 1256 [3d Dept 2006]). Although petitioner "should have been provided with the medical records of a correction officer who was injured while trying to restrain him, any such error was harmless given the overwhelming evidence of petitioner's guilt, as well as the fact that the Hearing Officer read into the record the reports of the officer's injuries and the officer testified to the same" (*Matter of Martin v Fischer*, 98 AD3d 774, 775 [3d Dept 2012] [internal citation omitted]; *see Matter of Felder v Fischer*, 120 AD3d 858, 858 [3d Dept 2014]). We similarly reject petitioner's contention that he was deprived of his due process rights as he did not receive copies of the unusual incident report or use of force reports. At the time of the hearing, the record shows that only the preliminary reports were available, which were nevertheless read into the record in petitioner's presence (*see Matter of Reid v Venettozzi*, 224 AD3d 1037, 1038 [3d Dept 2024]; *Matter of Knight v Rodriguez*, 217 AD3d 1300, 1301 [3d Dept 2023]). In any event, our in camera review of the final unusual incident report and use of force reports failed to disclose any information exonerating petitioner of his guilt, and petitioner has otherwise failed to demonstrate that he was prejudiced by not receiving copies of such reports (*see Matter of Coggins v Rodriguez*, 236 AD3d 1285, 1287 [3d Dept 2025]; *Matter of Gaston v Fischer*, 109 AD3d 1063, 1064 [3d Dept 2013]). Petitioner's remaining contentions, including that his counsel should have been provided a copy of the video recording, have been considered and found to be without merit.

Garry, P.J., Pritzker, Ceresia, Fisher 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