

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

Decided and Entered: March 12, 2026

CV-25-0414

In the Matter of JUAN COLON,
Petitioner,

v

DEPARTMENT OF CORRECTIONS
AND COMMUNITY
SUPERVISION,
Respondent.

MEMORANDUM AND JUDGMENT

Calendar Date: February 6, 2026

Before: Garry, P.J., Clark, Pritzker, Reynolds Fitzgerald and McShan, JJ.

Juan Colon, Napanoch, 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 a prison disciplinary rule.

During a block frisk, a correction lieutenant was using a mirror to check the tracks above the cell doors, an area commonly used by cell occupants as a shelf to hold personal items. The lieutenant found a sharpened piece of metal with a plastic wrap handle and a shoelace lanyard above the door to petitioner's cell. Petitioner was charged in a misbehavior report with violating three prison disciplinary rules, including the one prohibiting weapons possession. Following a tier III disciplinary hearing, he was found

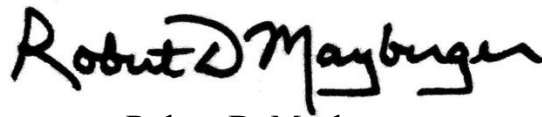
guilty as charged. The determination was modified upon administrative appeal to dismiss two of the charges as redundant, but the finding of guilt regarding weapons possession was upheld. This CPLR article 78 proceeding ensued.

We confirm. The misbehavior report, related documentation and hearing testimony, which included petitioner's admission that he stored personal items in the area where the weapon was found and the testimony of the lieutenant who found the weapon that it would be "very tough" for anything to be in that area without the occupant of the cell knowing about it, constitute substantial evidence to support the determination of guilt (*see Matter of Nix v Venettozzi*, 196 AD3d 933, 933 [3d Dept 2021]; *Matter of Gomez v New York State Dept. of Corr. & Community Supervision*, 147 AD3d 1140, 1141 [3d Dept 2017]). Under the circumstances, "[t]he fact that the weapon was found in an area within petitioner's control, even if not exclusive, supports the inference of possession" (*Matter of Rodari v Venettozzi*, 186 AD3d 1860, 1861 [3d Dept 2020]; *see Matter of Dowling v Venettozzi*, 177 AD3d 1063, 1063-1064 [3d Dept 2019], *lv denied* 35 NY3d 901 [2020]; *compare Matter of Duschock v Prack*, 98 AD3d 777, 778 [3d Dept 2012]). Petitioner's explanation, to the extent it can be read as a denial that the weapon was his, raised a credibility issue for the Hearing Officer to resolve (*see Matter of Ramos v Annucci*, 203 AD3d 1370, 1370 [3d Dept 2022]; *Matter of Nix v Venettozzi*, 196 AD3d at 934; *Matter of Bonds v Annucci*, 193 AD3d 1204, 1205 [3d Dept 2021]).

Garry, P.J., Clark, 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 style with a large, prominent "R" and "M".

Robert D. Mayberger
Clerk of the Court