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

Decided and Entered: September 18, 2014 518198

In the Matter of KEVIN REESE,
Petitioner,
v MEMORANDUM AND JUDGMENT

BRIAN FISCHER, as Commissioner of Corrections and Community Supervision,
Respondent.

Calendar Date: August 4, 2014

Before: Peters, P.J., McCarthy, Rose, Egan Jr. and Lynch, JJ.

Kevin Reese, Auburn, petitioner pro se.

Eric T. Schneiderman, Attorney General, Albany (Peter H. Schiff 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 respondent which found petitioner guilty of violating certain prison disciplinary rules.

Petitioner was charged in a misbehavior report with possession of drugs, smuggling and violating facility package procedures after a package addressed to him was found to contain marihuana concealed in 19 candy bars. Following a tier III disciplinary hearing, petitioner was found guilty as charged. Petitioner's administrative appeal was unsuccessful, prompting this CPLR article 78 proceeding.

We confirm. The misbehavior report and related documentation, together with the testimony from the sergeant,

correction officer and investigator involved in the discovery and investigation of the incident, provide substantial evidence to support the determination of guilt (see Matter of Harrison v Fischer, 104 AD3d 1032, 1032 [2013]; Matter of Booker v Fischer, 102 AD3d 1045, 1046 [2013]; Matter of Boggs v Martuscello, 84 AD3d 1667, 1668 [2011]). Petitioner's testimony to the contrary, as well as any alleged inconsistencies in the hearing testimony, presented credibility issues for the Hearing Officer to resolve (see Matter of Rodriguez v Fischer, 111 AD3d 998, 999 [2013]; Matter of Harrison v Fischer, 104 AD3d at 1032). Furthermore, petitioner's contention that he was never in possession of the package containing the drugs does not negate his guilt inasmuch as "attempts or conspiracies to violate institutional rules of conduct, or as accessories to rule violations will be punishable to the same degree as violators of such rules" (7 NYCRR 270.3 [b]). Petitioner's remaining contentions are either without merit or unpreserved for this Court's review.

Peters, P.J., McCarthy, Rose, Egan Jr. and Lynch, JJ., concur.

ADJUDGED that the determination is confirmed, without costs, and petition dismissed.

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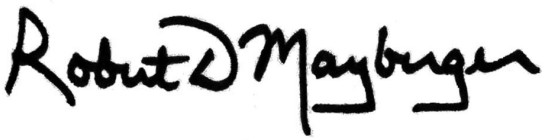

Robert D. Mayberger
Clerk of the Court