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

Decided and Entered: November 13, 2014 518433

In the Matter of WILLIAM VELEZ,
Petitioner,
v

MEMORANDUM AND JUDGMENT

ALBERT PRACK, as Director of Special Housing and Inmate Disciplinary Programs,
Respondent.

Calendar Date: September 16, 2014

Before: McCarthy, J.P., Rose, Egan Jr., Devine and Clark, JJ.

William Velez, Cape Vincent, 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 the Commissioner of Corrections and Community Supervision which found petitioner guilty of violating certain prison disciplinary rules.

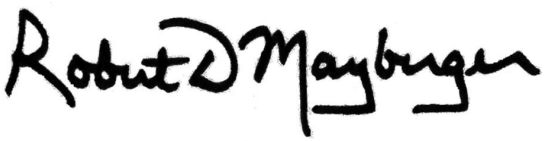
During a search of a single-occupant cube assigned to petitioner, a correction officer found an eyeglass arm with an attached nail secreted within a radiator. Petitioner was then charged in a misbehavior report with possessing a weapon and possessing an altered item. Following a tier III disciplinary hearing, he was found guilty as charged. The determination was affirmed upon administrative appeal, prompting this CPLR article 78 proceeding.

We confirm. Although petitioner did not have exclusive control over his cube, a "strong inference of possession [nevertheless] arises with respect to items found" there (Matter of Fong v Goord, 36 AD3d 1099, 1100 [2007]; see Matter of Morales v Fischer, 119 AD3d 1298, 1299 [2014]). The fact that petitioner had only lived in the cube for a few months did not serve to rebut that presumption, particularly in light of proof that he had several pairs of eyeglasses and that the condition of the improvised weapon suggested that it had not been in the radiator for very long. Petitioner's contention that the weapon was not his created a credibility issue for the Hearing Officer to resolve and, inasmuch as substantial evidence supports the determination of guilt, we will not disturb it (see Matter of Cox v Fischer, 114 AD3d 973, 974 [2014]; Matter of Fong v Goord, 36 AD3d at 1100).

McCarthy, J.P., Rose, Egan Jr., Devine and Clark, JJ., concur.

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

ENTER:



Robert D. Mayberger
Clerk of the Court