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

Decided and Entered: February 5, 2015 519031

In the Matter of RALIK BAILEY,
Petitioner,
v

MEMORANDUM AND JUDGMENT

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

Calendar Date: December 2, 2014

Before: Lahtinen, J.P., McCarthy, Lynch and Devine, JJ.

Ralik Bailey, Malone, 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 a prison disciplinary rule.

Petitioner, an inmate, commenced this proceeding challenging a disciplinary determination finding him guilty of disobeying a direct order. The misbehavior report and testimony that petitioner "had words" with the correction officer when he was directed to remove his arm from around another inmate's neck provide substantial evidence to support the determination of guilt (see Matter of Harrington v Prack, 91 AD3d 1244, 1245 [2012]). It is well settled that petitioner, as a prison inmate, "was required to promptly obey the order even if he disagreed

with it" (Matter of Wells v O'Keefe, 286 AD2d 791, 791 [2001]; see Matter of Tarbell v Prack, 89 AD3d 1342, 1343 [2011]). To the extent that petitioner claims that the misbehavior report was fabricated, this presented a credibility issue for the Hearing Officer to resolve (see Matter of Suero v Fischer, 95 AD3d 1509, 1509-1510 [2012]).

Lahtinen, J.P., McCarthy, Lynch and Devine, JJ., concur.

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

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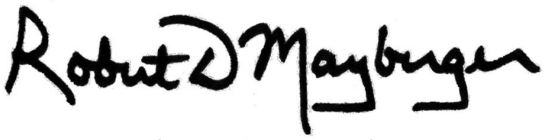

Robert D. Mayberger
Clerk of the Court