

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

Decided and Entered: August 13, 2015

519984

In the Matter of DOMINIC
EDWARDS,

Petitioner,

v

MEMORANDUM AND JUDGMENT

ANTHONY J. ANNUCCI, as Acting
Commissioner of Corrections
and Community Supervision,
Respondent.

Calendar Date: June 8, 2015

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

Dominic Edwards, Ogdensburg, 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 St. Lawrence County) to review a determination of respondent which found petitioner guilty of violating certain prison disciplinary rules.

Petitioner was found in possession of a brown leafy substance, and a correction officer subsequently determined that it was synthetic marihuana. As a result, petitioner was charged in a misbehavior report with possessing a narcotic, possessing contraband and smuggling. Following a tier III disciplinary hearing, petitioner was found guilty of possessing a narcotic and possessing contraband, but not guilty of smuggling. The determination was affirmed on administrative appeal, and this CPLR article 78 proceeding ensued.

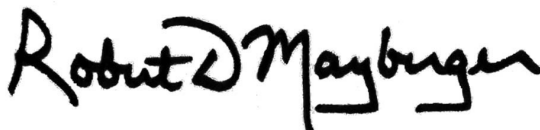
Initially, respondent concedes, and we agree, that substantial evidence does not support petitioner's guilt as to the charge of possessing a narcotic. Accordingly, we annul that part of the determination, but need not remit the matter for a redetermination of the penalty given that petitioner has already served the penalty and no loss of good time was imposed (see Matter of Hobson v Prack, 127 AD3d 1370, 1371 [2015]; Matter of Ramos v Prack, 125 AD3d 1036, 1037 [2015], lv dismissed 25 NY3d 1039 [2015]). We reach a different conclusion with regard to that part of the determination finding petitioner guilty of possessing contraband, as petitioner's admission at the hearing that he had tobacco in his possession provides substantial evidence to support the determination of guilt as to that charge (see Matter of Garcia v Garner, 122 AD3d 988, 989 [2014]; Matter of Dozier v Selsky, 54 AD3d 1074, 1074 [2008]).

Finally, although the Hearing Officer had general knowledge of the incident, the record is devoid of evidence that he was involved in investigating the incident so as to require his recusal (see Matter of Bellinger v Venettozzi, 119 AD3d 1311, 1312 [2014]; Matter of Brooks v Unger, 110 AD3d 1122, 1122 [2013]).

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

ADJUDGED that the determination is modified, without costs, by annulling so much thereof as found petitioner guilty of possessing a narcotic; petition granted to that extent and respondent is directed to expunge all references to this charge from petitioner's institutional record; and, as so modified, confirmed.

ENTER:

A handwritten signature in black ink that reads "Robert D. Mayberger". The signature is written in a cursive, flowing style with a large, prominent "R" and "M".

Robert D. Mayberger
Clerk of the Court