

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

Decided and Entered: March 4, 2004

94344

In the Matter of DARRYL DEBOUE,
Petitioner,

v

MEMORANDUM AND JUDGMENT

GLENN S. GOORD, as Commissioner
of Correctional Services,
Respondent.

Calendar Date: January 26, 2004

Before: Mercure, J.P., Peters, Carpinello, Mugglin and Kane, JJ.

Darryl Deboue, Malone, petitioner pro se.

Eliot Spitzer, Attorney General, Albany (Nancy A. Spiegel 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 a prison disciplinary rule.

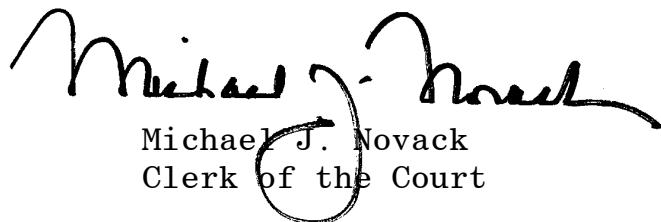
Petitioner commenced this CPLR article 78 proceeding challenging a determination finding him guilty of violating the prison disciplinary rule that prohibits the unauthorized use of a controlled substance after his urine twice tested positive for the presence of opiates. We reject petitioner's sole contention on appeal that an alleged defect in the chain of custody requires annulment of the determination. In accordance with 7 NYCRR 1020.4 (d) (5), the correction officer who witnessed petitioner provide a urine specimen made the appropriate notation on the request for urinalysis form. Although that correction officer did not make any notation in the chain of custody section of the

form, he was never actually in possession of the specimen. Rather, the record establishes that petitioner handed the specimen directly to another correction officer, who made the initial notation on the chain of custody (see 7 NYCRR 1020.4 [e] [1] [i]).

Mercure, J.P., Peters, Carpinello, Mugglin and Kane, JJ., concur.

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

ENTER:



Michael J. Novack
Clerk of the Court