

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

Decided and Entered: July 27, 2017

523297

In the Matter of RICARDO LYONS,
Petitioner,

v

MEMORANDUM AND JUDGMENT

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

Calendar Date: June 12, 2017

Before: McCarthy, J.P., Egan Jr., Rose, Aarons and Pritzker, JJ.

Ricardo Lyons, Auburn, petitioner pro se.

Eric T. Schneiderman, Attorney General, Albany (Marcus J. Mastracco 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 finding petitioner guilty of violating a prison disciplinary rule.

Petitioner was charged in a misbehavior report with using a controlled substance after a specimen of his urine twice tested positive for the presence of cannabinoids. He was found guilty of the charge following a tier III disciplinary hearing, and the determination was later affirmed on administrative appeal. This CPLR article 78 proceeding ensued.

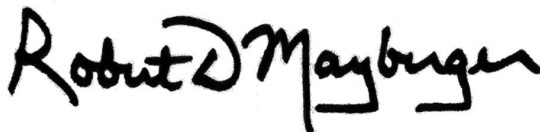
We confirm. The misbehavior report, positive urinalysis test results and related documentation, together with the testimony of the correction officer who collected and tested

petitioner's urine specimen, provide substantial evidence supporting the determination of guilt (see Matter of Green v Annucci, 148 AD3d 1443, 1444 [2017]; Matter of Creamer v Venettozzi, 117 AD3d 1254, 1254 [2014]). Contrary to petitioner's claim, the chain of custody of the specimen was properly established by the information contained on the request for urinalysis form and the testimony of the officer who collected and tested petitioner's specimen (see Matter of Martinez v Annucci, 134 AD3d 1380, 1381 [2015]; Matter of Paddyfote v Fischer, 118 AD3d 1240, 1241 [2014]). Moreover, inasmuch as the specimen was tested one hour and 45 minutes after it was collected, the officer was not required to refrigerate it in accordance with 7 NYCRR 1020.4 (f) (1) (see Matter of Ellison v Goord, 274 AD2d 800, 801 [2000]; Matter of Peterson v Goord, 268 AD2d 739, 739 [2000]). Lastly, the record does not disclose that the Hearing Officer was biased or that the determination flowed from any alleged bias (see Matter of Williams v Prack, 130 AD3d 1123, 1124 [2015]; Matter of Paddyfote v Fischer, 118 AD3d at 1241).

McCarthy, J.P., Egan Jr., Rose, Aarons and Pritzker, JJ., concur.

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

ENTER:

A handwritten signature in black ink that reads "Robert D. Mayberger". The signature is written in a cursive, slightly slanted style.

Robert D. Mayberger
Clerk of the Court