

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

Decided and Entered: January 23, 2003

92189

In the Matter of JAVIER
MONTALBO,
Petitioner,
v

MEMORANDUM AND JUDGMENT

DONALD SELSKY, as Director of
Special Housing and Inmate
Disciplinary Program,
Respondent.

Calendar Date: December 30, 2002

Before: Mercure, J.P., Crew III, Spain, Lahtinen and Kane, JJ.

Javier Montalbo, Marcy, petitioner pro se.

Eliot Spitzer, Attorney General, Albany (Andrea Oser 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 Correctional
Services finding petitioner guilty of violating a prison
disciplinary rule.

Petitioner was found guilty of violating the prison
disciplinary rule prohibiting inmates from the unauthorized use
of controlled substances after his urine twice tested positive
for the presence of opiates. Substantial evidence of
petitioner's guilt was presented at his disciplinary hearing in
the form of the misbehavior report, written by the correction
officer who conducted the urinalysis testing, together with the
positive laboratory test results and their supporting

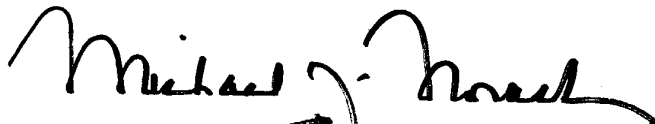
documentation (see Matter of Bonaparte v Goord, 289 AD2d 913; Matter of Mercado v Selsky, 270 AD2d 550).

We have examined petitioner's assertions that there were gaps in the chain of custody of his urine sample and that the testing thereof was not in accordance with the procedures set forth in 7 NYCRR 1020.4, and find them to be without merit (see Matter of Sierra v Goord, 241 AD2d 617). Any questions regarding the chain of custody of petitioner's urine sample or the probity of the urinalysis testing procedures implemented were sufficiently explained in the hearing testimony presented (see Matter of Graziano v Goord, 272 AD2d 701, 702). Petitioner's remaining contentions, including his allegation of hearing officer bias, have been reviewed and found to be without merit.

Mercure, J.P., Crew III, Spain, Lahtinen and Kane, JJ.,
concur.

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

ENTER:



Michael J. Novack
Clerk of the Court