

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

Decided and Entered: June 23, 2005

96724

In the Matter of ANTHONY
RUGGIERO,
Petitioner,

v

MEMORANDUM AND JUDGMENT

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

Calendar Date: May 18, 2005

Before: Cardona, P.J., Crew III, Peters, Rose and Lahtinen, JJ.

Anthony Ruggiero, Pine City, 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 certain prison disciplinary rules.

Petitioner, an inmate, was charged with failing to obey a
direct order and failing to comply with instructions given by
staff regarding urinalysis testing procedures in violation of the
prison's disciplinary rules. He was found guilty of the charges
following a tier III disciplinary hearing, which determination
was affirmed upon administrative appeal. This CPLR article 78
proceeding ensued.

We confirm. The testimony of the correction officers who
reported the incident established that petitioner was given a

direct order not to use the bathroom when he arrived at the first aid area and that the standard urinalysis procedure requires inmates to refrain from urinating immediately prior to providing a sample to ensure the accuracy of the result. This testimony, together with the misbehavior report, constitutes substantial evidence to support the determination of guilt (see Matter of Odome v Goord, 14 AD3d 975, 975 [2005]; Matter of Lopez v Goord, 14 AD3d 771 [2005]). Petitioner's remaining claims have not been preserved for our review (see Matter of Stanislas v Senkowski, 253 AD2d 972, 973 [1998]; Matter of McClean v Le Fevre, 142 AD2d 911, 912 [1988]; see also Matter of Youngblood v Goord, 267 AD2d 640, 640 [1999]).

Cardona, P.J., Crew III, Peters, Rose and Lahtinen, JJ.,
concur.

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

ENTER:

A handwritten signature in black ink, appearing to read "Michael J. Novack". The signature is fluid and cursive, with a large loop at the end.

Michael J. Novack
Clerk of the Court