

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

Decided and Entered: December 29, 2005

98048

In the Matter of KASIEM
CALLENDER,

Petitioner,

v

MEMORANDUM AND JUDGMENT

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

Calendar Date: November 28, 2005

Before: Cardona, P.J., Peters, Spain, Mugglin and Rose, JJ.

Kasim Callender, Comstock, 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.

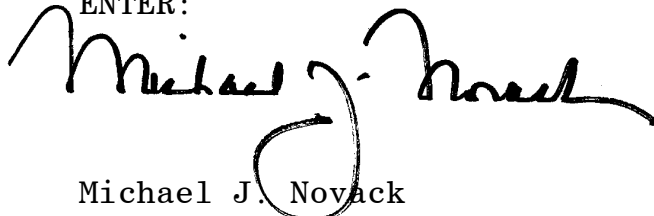
Petitioner was charged in a misbehavior report with violating the prison disciplinary rule that prohibits the unauthorized use of a controlled substance after his urine sample, collected on July 22, 2004, twice tested positive for the presence of cannabinoids. Following a disciplinary hearing, petitioner was found guilty of drug use and his subsequent administrative appeal was unsuccessful. Thereafter, petitioner commenced this CPLR article 78 proceeding challenging the determination.

The record establishes that at the time the July 22, 2004 sample was tested, petitioner had recently been disciplined for marihuana use based upon positive test results of his urine sample collected on June 30, 2004. Petitioner contends that the positive urinalysis results at issue in this proceeding were caused by residual marihuana from the earlier drug use for which he had already been disciplined. Although evidence in the record established that detectable amounts of marihuana can remain in the urine of long-term chronic marihuana users for up to 30 days, it was within the province of the Hearing Officer to reject petitioner's self-serving testimony that he was a frequent user of marihuana (see Matter of Padilla v Selsky, 300 AD2d 856, 857 [2002]). In any event, petitioner admitted to using marihuana after the June 30, 2004 urine sample was collected. Accordingly, the misbehavior report, supporting documentation and testimony at the hearing provide substantial evidence to support the determination of guilt (see id. at 857). Petitioner's remaining contentions, including that he received inadequate employee assistance, have been reviewed and found to be without merit.

Cardona, P.J., Peters, Spain, Mugglin and Rose, 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