

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

Decided and Entered: June 8, 2006

98475

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In the Matter of CARLOS MORENO,  
Petitioner,

v

MEMORANDUM AND JUDGMENT

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

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Calendar Date: May 17, 2006

Before: Cardona, P.J., Crew III, Carpinello, Mugglin and  
Kane, JJ.

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Carlos Moreno, Marcy, petitioner pro se.

Eliot Spitzer, Attorney General, Albany (Peter H. Schiff of  
counsel), for respondent.

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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 given three hours within which to comply  
with a correction officer's directive to produce a urine  
specimen. He was informed of the consequences of his failure to  
do so within the allotted time and was permitted to consume one  
eight-ounce glass of water each hour. When petitioner was unable  
to produce a urine specimen at the end of the three-hour period,  
he was charged in a misbehavior report with refusing a direct  
order and failing to comply with urinalysis testing procedures.  
He was found guilty of the latter charge at the conclusion of a  
tier III disciplinary hearing and the determination was upheld on

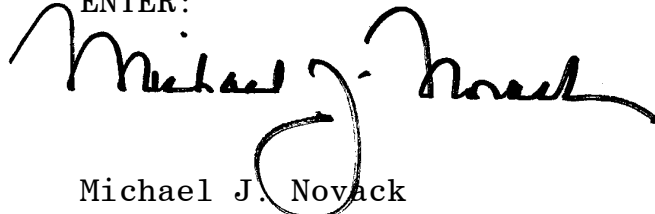
administrative appeal. This CPLR article 78 proceeding ensued.

We confirm. The misbehavior report, together with the considerable testimony adduced at the hearing, provide substantial evidence supporting the determination of guilt (see Matter of Lopez v Goord, 14 AD3d 771 [2005]; Matter of Jackson v Goord, 305 AD2d 839, 839 [2003], lv denied 100 NY2d 510 [2003]). Although petitioner maintained that his medical problems and certain medication he was taking prevented him from providing a sample adequate for testing, a physician familiar with his medical history and medication testified that these matters would not have caused him to be unable to provide a proper specimen within the time allotted (see e.g. Matter of Infante v Selsky, 21 AD3d 633, 634 [2005]; Matter of Zhong v Selsky, 307 AD2d 498, 499 [2003]). Furthermore, we find no merit to petitioner's claims that he was improperly denied requested urinalysis log book entries or that he was denied the right to call a urologist, whom he did not specifically request as a witness, to testify at the hearing.

Cardona, P.J., Crew III, Carpinello, Mugglin and Kane, 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 written in a cursive style with a large, looping initial "M".

Michael J. Novack  
Clerk of the Court