

SUPREME COURT OF THE STATE OF NEW YORK
Appellate Division, Fourth Judicial Department

103

CA 14-01790

PRESENT: WHALEN, P.J., SMITH, CENTRA, CARNI, AND SCUDDER, JJ.

IN THE MATTER OF WILFREDO POLANCO,
PETITIONER-APPELLANT,

V

MEMORANDUM AND ORDER

ANTHONY ANNUCCI, ACTING COMMISSIONER, NEW YORK
STATE DEPARTMENT OF CORRECTIONS AND COMMUNITY
SUPERVISION, RESPONDENT-RESPONDENT.

WYOMING COUNTY-ATTICA LEGAL AID BUREAU, WARSAW (LEAH R. NOWOTARSKI OF
COUNSEL), FOR PETITIONER-APPELLANT.

ERIC T. SCHNEIDERMAN, ATTORNEY GENERAL, ALBANY (MARCUS J. MASTRACCO OF
COUNSEL), FOR RESPONDENT-RESPONDENT.

Appeal from a judgment of the Supreme Court, Wyoming County
(Michael M. Mohun, A.J.), entered August 29, 2014 in a proceeding
pursuant to CPLR article 78. The judgment dismissed the petition.

It is hereby ORDERED that the judgment so appealed from is
unanimously affirmed without costs.

Memorandum: Petitioner commenced this CPLR article 78 proceeding
seeking to annul the determination, after a tier II hearing, that he
violated several inmate rules arising from his refusal to follow an
order directing him to move to a different cell. We reject
petitioner's contention that he was denied due process when the
Hearing Officer did not allow him to call certain witnesses to testify
at the hearing. Petitioner contended that the witnesses would support
his contention that he had a valid reason for refusing to follow the
correction officer's order that he move to a different cell. "It is
well settled that petitioner, as a prison inmate, 'was required to
promptly obey the order even if he disagreed with it' " (*Matter of
Bailey v Prack*, 125 AD3d 1028, 1028; see *Matter of Miller v Goord*, 2
AD3d 928, 930). Inasmuch as the proposed witnesses had no information
regarding whether petitioner refused to obey an order, their testimony
was properly excluded based on "their lack of direct knowledge of the
facts giving rise to this proceeding" (*Matter of Nijman v Goord*, 294
AD2d 737, 738; see *Miller*, 2 AD3d at 930). Finally, petitioner failed
to exhaust his administrative remedies with respect to his contention
that the Hearing Officer was biased against him because he failed to
raise it in his administrative appeal, and this Court "has no
discretionary power to reach [it]" (*Matter of Nelson v Coughlin*, 188

AD2d 1071, 1071, *appeal dismissed* 81 NY2d 834).

Entered: February 5, 2016

Frances E. Cafarell
Clerk of the Court