

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

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CA 23-00929

PRESENT: WHALEN, P.J., LINDLEY, BANNISTER, OGDEN, AND GREENWOOD, JJ.

IN THE MATTER OF BRANDON EVANS,
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 (NORMAN P. EFFMAN OF
COUNSEL), FOR PETITIONER-APPELLANT.

LETITIA JAMES, ATTORNEY GENERAL, ALBANY (KEVIN C. HU OF COUNSEL), FOR
RESPONDENT-RESPONDENT.

Appeal from a judgment of the Supreme Court, Wyoming County
(Michael M. Mohun, A.J.), entered May 10, 2023, 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, following a tier III disciplinary
hearing, that he violated incarcerated individual rule 113.10 (7 NYCRR
270.2 [B] [14] [i] [weapon]). Supreme Court dismissed the petition,
and we affirm.

Petitioner failed to raise in his administrative appeal his
contention that the Hearing Officer relied on evidence outside the
record in rendering a decision. Petitioner thus failed to exhaust his
administrative remedies with respect to that contention, and this
Court lacks the discretionary authority to consider it (*see Matter of
Pierre v Annucci*, 181 AD3d 1179, 1180 [4th Dept 2020]; *Matter of Plaza
v Annucci*, 173 AD3d 1778, 1778-1779 [4th Dept 2019]). Contrary to
petitioner's further contention, the record does not support his claim
that the Hearing Officer failed to electronically record the entire
hearing (*see Matter of Olukotun-Williams v Gardner*, 221 AD3d 1164,
1165 [3d Dept 2023]; *Matter of Barnes v Annucci*, 185 AD3d 1367, 1367
[3d Dept 2020]).

Entered: March 22, 2024

Ann Dillon Flynn
Clerk of the Court