

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

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CA 23-01650

PRESENT: SMITH, J.P., CURRAN, MONTOUR, NOWAK, AND DELCONTE, JJ.

IN THE MATTER OF WILLIAM SHRUBSALL,
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.

LETITIA JAMES, ATTORNEY GENERAL, ALBANY (SARAH L. ROSENBLUTH OF
COUNSEL), FOR RESPONDENT-RESPONDENT.

Appeal from a judgment of the Supreme Court, Wyoming County
(Michael M. Mohun, A.J.), entered September 12, 2023, in a proceeding
pursuant to CPLR article 78. The judgment dismissed the amended
petition.

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

Memorandum: Petitioner appeals from a judgment dismissing his
CPLR article 78 amended petition seeking to annul the determination of
the Board of Parole (Board) denying his request for release to parole
supervision. We affirm.

Petitioner contends that the Board failed to measure his
rehabilitation under current legislative mandates because it did not
use a risk and needs assessment instrument tailored to his
programming. Petitioner failed to preserve that contention for our
review inasmuch as he did not raise it in his administrative appeal or
in the amended petition (*see Matter of Krupa v Stanford*, 145 AD3d
1656, 1656 [4th Dept 2016]). Petitioner further contends that the
illegibility of the signatures of the Board members who decided his
administrative appeal renders it impossible to determine whether the
Board violated Executive Law § 259-i (4) (a), which prohibits Board
members who participated in the parole determination from
participating in the administrative appeal. Petitioner similarly
failed to preserve that contention for our review inasmuch as he did
not raise it in his amended petition (*see Matter of Ruggiero v Coombe*,
219 AD2d 844, 844 [4th Dept 1995]; *see also Matter of Allen v Evans*,
82 AD3d 1427, 1428 [3d Dept 2011]). We have no discretionary

authority to review petitioner's unpreserved contentions in this CPLR article 78 proceeding (see *Matter of Khan v New York State Dept. of Health*, 96 NY2d 879, 880 [2001]; *Krupa*, 145 AD3d at 1656).

Finally, to the extent that petitioner contends otherwise, we conclude upon our review of the record that the Board properly considered the requisite factors and adequately set forth its reasons to deny petitioner's application for release and "that there was no showing of irrationality bordering on impropriety" (*Krupa*, 145 AD3d at 1656-1657 [internal quotation marks omitted]; see *Matter of Milling v Berbery*, 31 AD3d 1202, 1203 [4th Dept 2006], *lv denied* 7 NY3d 808 [2006], *rearg denied* 7 NY3d 922 [2006]).