

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

774

CA 13-01294

PRESENT: SMITH, J.P., FAHEY, PERADOTTO, SCONIERS, AND VALENTINO, JJ.

IN THE MATTER OF KHALAIRE ALLAH,
PETITIONER-APPELLANT,

V

MEMORANDUM AND ORDER

BRIAN FISCHER, 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 (WILLIAM E. STORRS OF
COUNSEL), FOR RESPONDENT-RESPONDENT.

Appeal from a judgment of the Supreme Court, Wyoming County (Mark
H. Dadd, A.J.), entered February 4, 2013 in a CPLR article 78
proceeding. 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 III hearing that he
violated inmate rule 113.26 (7 NYCRR 270.2 [B] [14] [xvii]). On appeal
from the judgment dismissing the petition, petitioner contends that
the record is insufficient to permit judicial review because
respondent failed to provide a copy of recorded conversations between
petitioner and a third party. That contention is not properly before
us inasmuch as it is raised for the first time on appeal (*see Zelnik v*
Bidermann Indus. U.S.A., 242 AD2d 227, 232) and, in any event, we
conclude that it is without merit. Finally, petitioner's procedural
objections, including his due process challenges, are not preserved
for our review inasmuch as he did not raise those issues at the
hearing (*see Matter of Jones v Fischer*, 111 AD3d 1362, 1363), and he
failed to exhaust his administrative remedies with respect to them
because he did not raise them on his administrative appeal (*see Matter*
of Nelson v Coughlin, 188 AD2d 1071, 1071, *appeal dismissed* 81 NY2d
834).

Entered: June 20, 2014

Frances E. Cafarell
Clerk of the Court