

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

571

CA 16-00385

PRESENT: WHALEN, P.J., CARNI, NEMOYER, CURRAN, AND TROUTMAN, JJ.

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IN THE MATTER OF JASON PHILLIPS,  
PETITIONER-APPELLANT,

V

MEMORANDUM AND ORDER

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

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WYOMING COUNTY-ATTICA LEGAL AID BUREAU, WARSAW (ADAM W. KOCH OF  
COUNSEL), FOR PETITIONER-APPELLANT.

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

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Appeal from a judgment of the Supreme Court, Wyoming County  
(Michael M. Mohun, A.J.), entered December 22, 2015 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 proceeding seeking to  
annul a determination finding him guilty, following a tier III  
hearing, of violating inmate rules 101.10 (7 NYCRR 270.2 [B] [2] [i]  
[engaging in sexual acts]), 106.10 (7 NYCRR 270.2 [B] [7] [i]  
[refusing a direct order]), and 180.10 (7 NYCRR 270.2 [B] [26] [i]  
[violating a visitation procedure]). Petitioner appeals from a  
judgment dismissing the petition.

At the outset, with regard to petitioner's contention that  
Supreme Court erred in determining that the record of the  
administrative hearing was sufficient to permit meaningful judicial  
review even in the absence of a certain videotape that was misplaced  
following the hearing and determination, we note that the videotape  
has since been found by respondent and has been forwarded to us for  
our in camera review. This is thus not a case in which respondent has  
failed to provide a complete record of the administrative proceedings  
(see CPLR 7804 [e]), thereby precluding meaningful review of the  
determination and warranting a granting of the petition and an  
annulment of the determination (see generally *Matter of Tolliver v  
Fischer*, 125 AD3d 1023, 1023-1024, lv denied 25 NY3d 908; *Matter of  
Farrell v New York State Off. of the Attorney Gen.*, 108 AD3d 801, 801-  
802).

Contrary to petitioner's contention, the court did not err in concluding that the Hearing Officer was not biased against him and that the determination did not flow from such alleged bias (see *Matter of Jones v Annucci*, 141 AD3d 1108, 1109; *Matter of Barnes v Annucci*, 140 AD3d 1779, 1779; *Matter of Colon v Fischer*, 83 AD3d 1500, 1501-1502; see also *Matter of Green v Sticht*, 124 AD3d 1338, 1339, lv denied 26 NY3d 906). Petitioner failed to exhaust his administrative remedies with regard to his contention that the Hearing Officer improperly excluded him from the hearing room, and we therefore have no discretionary power to reach that contention (see generally *Matter of Gray v Annucci*, 144 AD3d 1613, 1614; *Matter of Sabino v Hulihan*, 105 AD3d 1426, 1426; *Matter of Nelson v Coughlin*, 188 AD2d 1071, 1071, appeal dismissed 81 NY2d 834).

Entered: May 5, 2017

Frances E. Cafarell  
Clerk of the Court