

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

**1081**

**TP 17-00422**

PRESENT: WHALEN, P.J., SMITH, CARNI, DEJOSEPH, AND CURRAN, JJ.

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IN THE MATTER OF LUIS NUNEZ, PETITIONER,

V

MEMORANDUM AND ORDER

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

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

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

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Proceeding pursuant to CPLR article 78 (transferred to the Appellate Division of the Supreme Court in the Fourth Judicial Department by order of the Supreme Court, Wyoming County [Michael M. Mohun, A.J.], entered February 28, 2017) to review a determination of respondent. The determination found after a tier III hearing that petitioner had violated an inmate rule.

It is hereby ORDERED that the determination is unanimously confirmed without costs and the petition is dismissed.

Memorandum: Petitioner commenced this CPLR article 78 proceeding seeking to annul the determination, following a tier III disciplinary hearing, that he violated inmate rule 113.24 (7 NYCRR 270.2 [B] [14] [xiv] [drug use]). We conclude that there is substantial evidence to support the determination inasmuch as petitioner pleaded guilty to the violation of that rule (*see Matter of Liner v Fischer*, 96 AD3d 1416, 1417). Petitioner failed to exhaust his administrative remedies with respect to his remaining contentions because he failed to raise them in his administrative appeal, and "this Court has no discretionary authority to reach th[ose] contention[s]" (*Matter of Johnson v Lempke*, 144 AD3d 1677, 1678 [internal quotation marks omitted]).

Entered: September 29, 2017

Mark W. Bennett  
Clerk of the Court