

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

**706**

**TP 18-00048**

PRESENT: CARNI, J.P., LINDLEY, NEMOYER, CURRAN, AND WINSLOW, JJ.

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IN THE MATTER OF JUSTIN CORDOVA, 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.

BARBARA D. UNDERWOOD, 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 January 8, 2018) to review a determination of respondent. The determination found after a tier III hearing that petitioner had violated various inmate rules.

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 hearing, that petitioner violated various inmate rules, including assault on an inmate in violation of inmate rule 100.10 (7 NYCRR 270.2 [B] [1] [i]). Contrary to petitioner's contention, the determination is supported by substantial evidence (*see generally People ex rel. Vega v Smith*, 66 NY2d 130, 139 [1985]), i.e., the misbehavior report and the hearing testimony of its author, which established that petitioner approached the victim from behind and cut him and that, immediately after the incident, the victim identified petitioner as the assailant (*see generally Matter of Foster v Coughlin*, 76 NY2d 964, 966 [1990]). The confidential testimony heard by the Hearing Officer provided a sufficient basis upon which to assess the credibility of the statements made by the victim to the author of the report (*see Matter of Porter v Annucci*, 156 AD3d 1430, 1430-1431 [4th Dept 2017]). Petitioner's denials raised, at most, an issue of credibility for resolution by the Hearing Officer (*see Foster*, 76 NY2d at 966).

Entered: June 8, 2018

Mark W. Bennett  
Clerk of the Court