

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

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**CA 18-01228**

PRESENT: CENTRA, J.P., PERADOTTO, DEJOSEPH, AND WINSLOW, JJ.

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IN THE MATTER OF LORCEN BURROUGHS,  
PETITIONER-APPELLANT,

V

MEMORANDUM AND ORDER

SUPERINTENDENT JOHN COLVIN, CAPTAIN DAVID M. GLEASON, LT. ANDREW P. GIANNINO AND ANTHONY ANNUCCI, ACTING COMMISSIONER, NEW YORK STATE DEPARTMENT OF CORRECTIONS AND COMMUNITY SUPERVISION, RESPONDENTS-RESPONDENTS.

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LORCEN BURROUGHS, PETITIONER-APPELLANT PRO SE.

BARBARA D. UNDERWOOD, ATTORNEY GENERAL, ALBANY (MARCUS J. MASTRACCO OF COUNSEL), FOR RESPONDENTS-RESPONDENTS.

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Appeal from a judgment of the Supreme Court, Seneca County (Dennis F. Bender, A.J.), entered April 16, 2018 in a CPLR article 78 proceeding. The judgment denied 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 finding him guilty, following a tier II hearing, of violating inmate rules 107.11 (7 NYCRR 270.2 [B] [8] [ii] [harassment]) and 180.11 (7 NYCRR 270.2 [B] [26] [ii] [facility correspondence violation]). Petitioner appeals from a judgment denying his petition. We affirm.

Petitioner's contention that the determination is not supported by substantial evidence was not raised in the petition and is therefore not properly before us (*see Matter of Cole v Goord*, 47 AD3d 1148, 1148 [3d Dept 2008]; *see generally Matter of Pigmentel v Selsky*, 19 AD3d 816, 817 [3d Dept 2005]; *Matter of Bones v Kelly*, 122 AD2d 593, 593 [4th Dept 1986]). Petitioner's further contention that the Hearing Officer erred in denying his request to call a certain witness at the hearing was not raised in petitioner's administrative appeal. Petitioner thus failed to exhaust his administrative remedies with respect to that contention (*see Matter of Ballard v Kickbush*, 165 AD3d 1587, 1589 [4th Dept 2018], *appeal dismissed* – NY3d – [Feb. 14, 2019]), and this Court " 'has no discretionary power to reach [it]' " (*Matter of Jones v Annucci*, 141 AD3d 1108, 1109 [4th Dept 2016]; *see*

*Matter of Ross-Simmons v Fischer*, 115 AD3d 1234, 1234 [4th Dept 2014]). Finally, contrary to petitioner's contention, Supreme Court did not err in rejecting his assertion that the Hearing Officer was biased or that the determination flowed from such alleged bias (see *Matter of Phillips v Annucci*, 150 AD3d 1673, 1674 [4th Dept 2017]; *Matter of Jeanty v Graham*, 147 AD3d 1323, 1325 [4th Dept 2017]).

Entered: March 22, 2019

Mark W. Bennett  
Clerk of the Court