

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

729

**CA 18-01651**

PRESENT: WHALEN, P.J., PERADOTTO, CARNI, LINDLEY, AND CURRAN, JJ.

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IN THE MATTER OF RONALD D. PLAZA,  
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.

LETITIA JAMES, ATTORNEY GENERAL, ALBANY (MARTIN A. HOTVET 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 August 15, 2018 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 CPLR article 78 proceeding  
seeking to annul a determination, following a tier II disciplinary  
hearing, that he violated inmate rules 106.10 (7 NYCRR 270.2 [B] [7]  
[i] [refusal to obey a direct order]) and 107.10 (7 NYCRR 270.2 [B]  
[8] [i] [interference with an employee]). Petitioner contends that  
the Hearing Officer, who found him not guilty of three of the five  
charges set forth in the misbehavior report, was biased and that the  
outcome of the disciplinary proceeding flowed from such bias.  
Petitioner failed to exhaust his administrative remedies with respect  
to that contention inasmuch as he failed to raise it in his  
administrative appeal (*see Matter of Viera v Annucci*, 170 AD3d 1645,  
1646 [4th Dept 2019]). Petitioner also failed to exhaust his  
administrative remedies with respect to his contention that he was  
improperly subjected to the discipline process because he was trying  
to effect a change in prison policy regarding the inmate telephone  
program (*see Correction Law § 138 [4]*) inasmuch as he failed to raise  
that particular contention at his tier II disciplinary hearing or in  
his administrative appeal (*see Viera*, 170 AD3d at 1646; *Matter of*  
*McFadden v Prack*, 93 AD3d 1268, 1269 [4th Dept 2012]). "[T]his Court  
has no discretionary authority to reach [those] contention[s]"

(*McFadden*, 93 AD3d at 1269 [internal quotation marks omitted]).

Entered: June 14, 2019

Mark W. Bennett  
Clerk of the Court