

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

722

**CA 18-01949**

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

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IN THE MATTER OF MAURICIO ESPINAL,  
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 (LEAH R. NOWOTARSKI OF  
COUNSEL), FOR PETITIONER-APPELLANT.

LETITIA JAMES, ATTORNEY GENERAL, ALBANY (KATE H. NEPVEU 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 June 27, 2018 in a CPLR article 78  
proceeding. 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 the determination of the New York State Board of  
Parole (Board) denying his release to parole supervision. Supreme  
Court properly denied the petition inasmuch as the record reflects  
that the Board considered the required statutory factors and  
adequately set forth its reasons for denying petitioner's application  
(see *Matter of Siao-Pao v Dennison*, 11 NY3d 777, 778 [2008], rearg  
denied 11 NY3d 885 [2008]; *Matter of Hamilton v New York State Div. of  
Parole*, 119 AD3d 1268, 1272-1273 [3d Dept 2014]) and inasmuch as the  
Board's determination does not exhibit "irrationality bordering on  
impropriety" (*Matter of Kenefick v Sticht*, 139 AD3d 1380, 1381 [4th  
Dept 2016], *lv denied* 28 NY3d 902 [2016] [internal quotation marks  
omitted]). Contrary to petitioner's contention, the Board took into  
account petitioner's deportation order; it was, however, only one of  
the factors under consideration in the Board's determination (see  
*generally Matter of King v New York State Div. of Parole*, 190 AD2d  
423, 431 [1st Dept 1993], *affd* 83 NY2d 788 [1994]). Petitioner's  
contention that the Board did not comply with Executive Law § 259-c  
(4) and Correction Law §§ 71-a and 112 (4) was not raised in his  
administrative appeal, and petitioner therefore has failed to exhaust  
his administrative remedies with respect to that contention (see  
*Matter of Peterson v Stanford*, 151 AD3d 1960, 1961 [4th Dept 2017];

*Matter of Karlin v Cully*, 104 AD3d 1285, 1286 [4th Dept 2013]).

Entered: June 28, 2019

Mark W. Bennett  
Clerk of the Court