

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

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CA 19-01267

PRESENT: WHALEN, P.J., CURRAN, TROUTMAN, WINSLOW, AND BANNISTER, JJ.

IN THE MATTER OF KEION PIERRE,
PETITIONER-APPELLANT,

V

MEMORANDUM AND ORDER

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

WYOMING COUNTY-ATTICA LEGAL AID BUREAU, WARSAW (ADAM W. KOCH OF
COUNSEL), FOR PETITIONER-APPELLANT.

LETITIA JAMES, ATTORNEY GENERAL, ALBANY (MARCUS J. MASTRACCO OF
COUNSEL), FOR RESPONDENT-RESPONDENT.

Appeal from a judgment of the Supreme Court, Wyoming County
(Michael M. Mohun, A.J.), entered February 19, 2019 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, following a tier III disciplinary
hearing, that he violated various inmate rules. Supreme Court
dismissed the petition and confirmed the determination. Petitioner
contends that the Hearing Officer failed to comply with 7 NYCRR 254.5
(b) inasmuch as the testimony of petitioner's requested witness was
taken outside his presence (*see Matter of Trapani v Annucci*, 117 AD3d
1473, 1474 [4th Dept 2014]; *Matter of Jones v Smith*, 116 AD2d 993, 993
[4th Dept 1986]; *cf. Matter of Janis v Prack*, 106 AD3d 1297, 1297 [3d
Dept 2013], *lv denied* 21 NY3d 864 [2013]). This Court has no
discretionary power to reach that contention because petitioner failed
to raise a challenge on that ground in his administrative appeal and
therefore failed to exhaust his administrative remedies with respect
thereto (*see Matter of Nelson v Coughlin*, 188 AD2d 1071, 1071 [4th
Dept 1992], *appeal dismissed* 81 NY2d 834 [1993]; *see also Matter of
Godwin v Goord*, 270 AD2d 881, 881 [4th Dept 2000]). We reject
petitioner's further contention that the Hearing Officer was biased
and that the determination flowed from the alleged bias (*see Matter of
Jones v Annucci*, 141 AD3d 1108, 1109 [4th Dept 2016]).

Entered: March 13, 2020

Mark W. Bennett
Clerk of the Court