

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

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CA 18-00726

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

IN THE MATTER OF VICTOR K. THOMAS,
PETITIONER-APPELLANT,

V

MEMORANDUM AND ORDER

TINA M. STANFORD, CHAIRWOMAN, NEW YORK
STATE BOARD OF PAROLE AND THOMAS KUBINIEC,
ADMINISTRATIVE LAW JUDGE,
RESPONDENTS-RESPONDENTS.

THE LEGAL AID BUREAU OF BUFFALO, INC., BUFFALO (JANE I. YOON OF
COUNSEL), FOR PETITIONER-APPELLANT.

LETITIA JAMES, ATTORNEY GENERAL, ALBANY (HEATHER MCKAY OF COUNSEL),
FOR RESPONDENTS-RESPONDENTS.

Appeal from a judgment (denominated order) of the Supreme Court,
Erie County (M. William Boller, A.J.), entered February 9, 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 revoking his release to parole
supervision upon his plea of guilty to violating a condition of his
parole that precluded him from "possess[ing] a smart phone, with
internet, camera [and] video capabilities, without permission from his
parole officer." The determination was affirmed on administrative
appeal. Petitioner now appeals from a judgment dismissing the
petition, and we affirm.

Petitioner contends that the subject parole condition violated
his right to free speech. Petitioner never raised that contention on
administrative appeal, and he therefore failed to exhaust his
administrative remedies with respect to that contention (see *Matter of*
Espinal v Annucci, 173 AD3d 1850, 1851 [4th Dept 2019]; see also
Matter of Secore v Mantello, 176 AD2d 1244, 1244 [4th Dept 1991];
People ex rel. Cotton v Rodriguez, 123 AD2d 338, 339 [2d Dept 1986]).
This Court has no discretionary authority to reach the contention (see
Matter of Alvarez v Fischer, 94 AD3d 1404, 1406 [4th Dept 2012]; see
generally *Matter of Nelson v Coughlin*, 188 AD2d 1071, 1071 [4th Dept
1992], appeal dismissed 81 NY2d 834 [1993]). We have considered

petitioner's remaining contention and conclude that it does not warrant modification or reversal of the judgment.

Entered: March 13, 2020

Mark W. Bennett
Clerk of the Court