

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

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CA 13-00359

PRESENT: CENTRA, J.P., FAHEY, PERADOTTO, SCONIERS, AND DEJOSEPH, JJ.

IN THE MATTER OF NELSON BRITTO,
PETITIONER-APPELLANT,

V

MEMORANDUM AND ORDER

BRIAN FISCHER, COMMISSIONER, NEW YORK STATE
DEPARTMENT OF CORRECTIONS AND COMMUNITY
SUPERVISION, RESPONDENT-RESPONDENT.

WYOMING COUNTY-ATTICA LEGAL AID BUREAU, WARSAW (LEAH R. NOWOTARSKI OF
COUNSEL), FOR PETITIONER-APPELLANT.

ERIC T. SCHNEIDERMAN, ATTORNEY GENERAL, ALBANY (JEFFREY W. LANG OF
COUNSEL), FOR RESPONDENT-RESPONDENT.

Appeal from a judgment of the Supreme Court, Wyoming County (Mark
H. Dadd, A.J.), entered January 28, 2013 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 the determination, following a tier III disciplinary
hearing, that he violated inmate rules 113.10 (7 NYCRR 270.2 [B] [14]
[i] [weapon possession]) and 114.10 (7 NYCRR 270.2 [B] [15] [i]
[smuggling]). Petitioner failed to exhaust his administrative
remedies with respect to his claim that he was denied his request for
a witness, and this Court has no discretionary authority to reach that
claim (*see Matter of Stewart v Fischer*, 109 AD3d 1122, 1123, *lv denied*
22 NY3d 858).

Entered: June 20, 2014

Frances E. Cafarell
Clerk of the Court