

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

1462

CA 13-01587

PRESENT: CENTRA, J.P., FAHEY, LINDLEY, SCONIERS, AND WHALEN, JJ.

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IN THE MATTER OF JUNIOR WILSON,  
PETITIONER-APPELLANT,

V

MEMORANDUM AND ORDER

BRIAN FISCHER, 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.

ERIC T. SCHNEIDERMAN, ATTORNEY GENERAL, ALBANY (MARCUS J. MASTRACCO OF  
COUNSEL), FOR RESPONDENT-RESPONDENT.

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Appeal from a judgment of the Supreme Court, Wyoming County (Mark  
H. Dadd, A.J.), entered August 2, 2013 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 appeals from a judgment dismissing his  
CPLR article 78 petition seeking to annul the determination after a  
tier III hearing that he violated inmate rule 113.24 (7 NYCRR 270.2  
[B] [14] [xiv] [drug use]). Petitioner contends that his due process  
rights were violated because his urine sample was not tested  
immediately, and it therefore should have been refrigerated prior to  
testing. Petitioner failed to exhaust his administrative remedy with  
respect to that contention because he failed to raise it in his  
administrative appeal, and this Court "has no discretionary power to  
reach [it]" (*Matter of Nelson v Coughlin*, 188 AD2d 1071, 1071, *appeal  
dismissed* 81 NY2d 834).

Entered: January 2, 2015

Frances E. Cafarell  
Clerk of the Court