

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

1205

CA 10-01587

PRESENT: CENTRA, J.P., FAHEY, PERADOTTO, GREEN, AND GORSKI, JJ.

IN THE MATTER OF JOSE A. FUENTES,
PETITIONER-APPELLANT,

V

MEMORANDUM AND ORDER

BRIAN FISCHER, COMMISSIONER, NEW YORK STATE
DEPARTMENT OF CORRECTIONAL SERVICES,
RESPONDENT-RESPONDENT.

JOSE A. FUENTES, PETITIONER-APPELLANT PRO SE.

ERIC T. SCHNEIDERMAN, ATTORNEY GENERAL, ALBANY (PETER H. SCHIFF OF
COUNSEL), FOR RESPONDENT-RESPONDENT.

Appeal from a judgment of the Supreme Court, Wyoming County (Mark H. Dadd, A.J.), entered June 25, 2010 in a proceeding pursuant to CPLR article 78. The judgment denied 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 after a Tier III hearing that he violated certain inmate rules. We note at the outset that, as respondent correctly contends, petitioner withdrew the substantial evidence issue when he appeared in Supreme Court, and the court thus was not required to transfer the proceeding to this Court to decide that issue (*see* CPLR 7804 [g]), nor do we address it. Petitioner failed to exhaust his administrative remedies with respect to his sole remaining contention, i.e., that his due process rights were violated when he was penalized for attempting to mail certain documents to his home, having failed to raise that contention at the Tier III hearing, and this Court has no discretionary authority to reach that contention (*see Matter of Nelson v Coughlin*, 188 AD2d 1071, *appeal dismissed* 81 NY2d 834).

Entered: November 10, 2011

Patricia L. Morgan
Clerk of the Court