

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

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**CA 13-02041**

PRESENT: SCUDDER, P.J., CENTRA, PERADOTTO, CARNI, AND SCONIERS, JJ.

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IN THE MATTER OF MICHAEL SHAW,  
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 (PETER H. SCHIFF 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 October 9, 2013 pursuant to a CPLR article 78 proceeding. The judgment confirmed the determination of respondent and 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 rule 102.10 (7 NYCRR 270.2 [B] [3] [i] [threats]) and rule 104.11 (7 NYCRR 270.2 [B] [5] [ii] [threats of violent conduct]). The record on appeal does not support petitioner's contention that he was deprived of his right to attend the hearing. To the contrary, the escort officer testified at the hearing that petitioner had refused to attend, despite having been advised that the hearing would proceed in his absence (*see Matter of Rouse v Fischer*, 94 AD3d 1310, 1310; *Matter of Abreu v Bezio*, 84 AD3d 1596, 1596-1597, *lv dismissed* 17 NY3d 781, *appeal dismissed* 17 NY3d 915). We further conclude that, based upon his refusal to attend the hearing, petitioner has failed to preserve any procedural challenges to the manner in which those hearings were conducted (*see Matter of McFadden v Dubray*, 61 AD3d 1170, 1171; *Matter of Cooper v Selsky*, 43 AD3d 1254, 1255, *lv dismissed* 9 NY3d 1026).

Entered: March 27, 2015

Frances E. Cafarell  
Clerk of the Court