

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

**498**

**CA 17-00593**

PRESENT: WHALEN, P.J., LINDLEY, DEJOSEPH, CURRAN, AND TROUTMAN, JJ.

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IN THE MATTER OF THEODORE HAYNES,  
PETITIONER-APPELLANT,

V

MEMORANDUM AND ORDER

ANTHONY ANNUCCI, ACTING COMMISSIONER, NEW YORK  
STATE DEPARTMENT OF CORRECTIONS AND COMMUNITY  
SUPERVISION, RESPONDENT-RESPONDENT.

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WYOMING COUNTY-ATTICA LEGAL AID BUREAU, WARSAW (ADAM W. KOCH 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 (denominated order) of the Supreme Court,  
Wyoming County (Michael M. Mohun, A.J.), entered February 6, 2017 in a  
CPLR article 78 proceeding. The judgment dismissed the petition.

It is hereby ORDERED that the judgment so appealed from is  
unanimously reversed on the law without costs, the petition is  
granted, the determination finding that petitioner violated inmate  
rules 100.11 (7 NYCRR 270.2 [B] [1] [ii]), 104.11 (7 NYCRR 270.2 [B]  
[5] [ii]), 104.13 (7 NYCRR 270.2 [B] [5] [iv]), 106.10 (7 NYCRR 270.2  
[B] [7] [i]), 107.10 (7 NYCRR 270.2 [B] [8] [i]), and 113.10 (7 NYCRR  
270.2 [B] [14] [i]) is annulled, and respondent is directed to expunge  
from petitioner's institutional record all references to the violation  
of those inmate rules.

Memorandum: Petitioner commenced this CPLR article 78 proceeding  
seeking to annul the determination, following a tier III disciplinary  
hearing, that he violated various inmate rules. We agree with  
petitioner that Supreme Court erred in dismissing his petition. As  
respondent correctly concedes, the Hearing Officer erroneously refused  
to consider evidence of petitioner's mental condition. "When an  
inmate's mental state or intellectual capacity is at issue, a hearing  
officer shall consider evidence regarding the inmate's mental  
condition or intellectual capacity at the time of the incident and at  
the time of the hearing in accordance with this section" (7 NYCRR  
254.6 [b]). An inmate's mental state is deemed to be at issue where,  
as here, "the hearing was delayed or adjourned, after an extension of  
time was obtained . . . , because the inmate became an inpatient" at  
the Central New York Psychiatric Center (7 NYCRR 254.6 [b] [1]  
[viii]). Because nearly three years have passed since the incident,  
"underscor[ing] the difficulty of insuring a due process hearing to

[petitioner] at this time," and petitioner has already served the period of confinement in the special housing unit that was imposed as part of the penalty, remittal for a new hearing is unwarranted (*Matter of Justice v Smith*, 69 AD2d 1018, 1018 [4th Dept 1979]). We therefore grant the petition by annulling the determination finding that he violated the inmate rules, and we direct respondent to expunge from his institutional record all references to those violations.

In light of our determination, we need not consider petitioner's remaining contentions.

Entered: April 27, 2018

Mark W. Bennett  
Clerk of the Court