

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

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TP 25-01429

PRESENT: WHALEN, P.J., LINDLEY, CURRAN, SMITH, AND DELCONTE, JJ.

IN THE MATTER OF CLIFFORD GAMBOA, PETITIONER,

V

MEMORANDUM AND ORDER

DANIEL F. MARTUSCELLO, III, ACTING COMMISSIONER,
NEW YORK STATE DEPARTMENT OF CORRECTIONS
AND COMMUNITY SUPERVISION, RESPONDENT.

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

LETITIA JAMES, ATTORNEY GENERAL, ALBANY (TAYLOR A. SUTTON OF COUNSEL),
FOR RESPONDENT.

Proceeding pursuant to CPLR article 78 (transferred to the Appellate Division of the Supreme Court in the Fourth Judicial Department by order of the Supreme Court, Wyoming County [Donald G. O'Geen, A.J.], entered August 18, 2025) to review a determination of respondent. The determination withholds one year and four months of good time against petitioner's sentence.

It is hereby ORDERED that the determination is unanimously confirmed without costs and the amended petition is dismissed.

Memorandum: Petitioner commenced this CPLR article 78 proceeding seeking to annul respondent's determination, upon the recommendation of the Time Allowance Committee (TAC), to withhold the entirety of petitioner's good time available based on, inter alia, his failure to complete alcohol and substance abuse training and aggression replacement training. Even assuming, arguendo, that the amended petition raised a substantial evidence issue and thus that the proceeding was properly transferred to this Court (*see Matter of White v Martuscello*, 242 AD3d 1546, 1547 [4th Dept 2025]), we conclude that it lacks merit.

"It is settled that any decision affecting good time allowances shall not be reviewed so long as it is made in accordance with the law" (*Matter of Pfeifer v Goord*, 272 AD2d 886, 886 [4th Dept 2000] [internal quotation marks omitted]; *see* Correction Law § 803 [4]). Here, we conclude that the TAC's determination was made in accordance with the law inasmuch as it was based on the undisputed ground that petitioner had failed to complete the indicated programs (*see Matter of McPherson v Goord*, 17 AD3d 750, 751 [3d Dept 2005], *lv denied* 5

NY3d 709 [2005]; *Pfeifer*, 272 AD2d at 886; *Matter of Staples v Goord*, 263 AD2d 943, 944 [3d Dept 1999], *lv denied* 94 NY2d 755 [1999], *rearg denied* 94 NY2d 900 [2000]).

Entered: March 27, 2026

Ann Dillon Flynn
Clerk of the Court