

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

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TP 25-01430

PRESENT: CURRAN, J.P., MONTOUR, SMITH, OGDEN, AND DELCONTE, JJ.

IN THE MATTER OF IVAN GILBERT, 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 (WILLIAM M. HAYES 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 O'Geen, A.J.], entered August 18, 2025) to review a determination of respondent. The determination found after a tier III hearing that petitioner had violated various incarcerated individual rules.

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

Memorandum: Petitioner commenced this CPLR article 78 proceeding seeking to annul a determination, following a tier III disciplinary hearing, that he violated incarcerated individual rules 101.10 (7 NYCRR 270.2 [B] [2] [i] [sex offense]) and 180.10 (7 NYCRR 270.2 [B] [26] [i] [facility visitation violation]). Contrary to petitioner's contention, the determination is supported by substantial evidence, i.e., "such relevant proof as a reasonable mind may accept as adequate to support a conclusion or ultimate fact" (*Matter of Bottom v Annucci*, 26 NY3d 983, 984-985 [2015] [internal quotation marks omitted]; see *Matter of Derby v Annucci*, 227 AD3d 1413, 1414 [4th Dept 2024]). Specifically, the misbehavior report and video of the relevant incident reviewed by the hearing officer constitute substantial evidence to support the determination (see generally *Derby*, 227 AD3d at 1414; *Matter of Hood v Fischer*, 100 AD3d 1122, 1123-1124 [3d Dept 2012]).

Entered: March 27, 2026

Ann Dillon Flynn
Clerk of the Court