

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

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**TP 25-01499**

PRESENT: BANNISTER, J.P., MONTOUR, GREENWOOD, NOWAK, AND HANNAH, JJ.

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IN THE MATTER OF LEON THOMAS, PETITIONER,

V

MEMORANDUM AND ORDER

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

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

LETITIA JAMES, ATTORNEY GENERAL, ALBANY (KATE H. NEPVEU OF COUNSEL),  
FOR RESPONDENT.

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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 27, 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 hearing, that he violated several incarcerated individual rules. To the extent that petitioner contends that the determination finding that he violated incarcerated individual rules 104.13 (7 NYCRR 270.2 [B] [5] [iv] [creating a disturbance]) and 106.10 (7 NYCRR 270.2 [B] [7] [i] [refusing a direct order]) is not supported by substantial evidence, we note that "his plea of guilty to those violations precludes our review of his contention" (*Matter of Caballero v Annucci*, 187 AD3d 1671, 1672 [4th Dept 2020]; see *Matter of Ingram v Annucci*, 151 AD3d 1778, 1778 [4th Dept 2017], lv denied 30 NY3d 904 [2017]; *Matter of Williams v Annucci*, 133 AD3d 1362, 1363 [4th Dept 2015]). We have reviewed petitioner's remaining contention and conclude that it does not require a different result.

Entered: April 24, 2026

Ann Dillon Flynn  
Clerk of the Court