

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

261

CA 25-00520

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

---

IN THE MATTER OF MICHAEL L. MCROBBIE,  
PETITIONER-APPELLANT,

V

MEMORANDUM AND ORDER

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

---

WYOMING COUNTY-ATTICA LEGAL AID BUREAU, WARSAW (NORMAN P. EFFMAN OF  
COUNSEL), FOR PETITIONER-APPELLANT.

LETITIA JAMES, ATTORNEY GENERAL, ALBANY (FRANK BRADY OF COUNSEL), FOR  
RESPONDENT-RESPONDENT.

---

Appeal from a judgment of the Supreme Court, Wyoming County  
(Donald G. O'Geen, A.J.), entered March 3, 2025, in a proceeding  
pursuant to CPLR article 78. The judgment dismissed the petition.

It is hereby ORDERED that the judgment so appealed from is  
unanimously affirmed without costs.

Memorandum: Petitioner appeals from a judgment dismissing his  
CPLR article 78 petition seeking to annul the determination of the  
Board of Parole (Board) revoking his release to parole supervision.  
We affirm.

Petitioner contends that Supreme Court improperly considered the  
Board's determination and the Board of Parole Appeals Unit's findings  
and decision, and that he was denied a statutory right under Executive  
Law § 259-i (4-a) (a) to appeal to County Court in lieu of an  
administrative appeal. Petitioner failed to preserve those  
contentions for our review inasmuch as he did not raise them in his  
administrative appeal or in the petition (see *Matter of Shrubsall v  
Annucci*, 230 AD3d 1556, 1556 [4th Dept 2024]; *Krupa v Stanford*, 145  
AD3d 1656, 1656 [4th Dept 2016]). We have no discretionary authority  
to review petitioner's unpreserved contentions in this CPLR article 78  
proceeding (see *Matter of Khan v New York State Dept. of Health*, 96  
NY2d 879, 880 [2001]).

Entered: June 5, 2026

Ann Dillon Flynn  
Clerk of the Court