

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

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KAH 22-00827

PRESENT: WHALEN, P.J., SMITH, PERADOTTO, BANNISTER, AND OGDEN, JJ.

THE PEOPLE OF THE STATE OF NEW YORK EX REL.
CHARLES FLOYD, PETITIONER-APPELLANT,

V

MEMORANDUM AND ORDER

DEPARTMENT OF CORRECTIONS AND COMMUNITY
SUPERVISION, RESPONDENT-RESPONDENT.

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

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

Appeal from a judgment of the Supreme Court, Wyoming County
(Michael M. Mohun, A.J.), entered May 16, 2022 in a habeas corpus
proceeding. The judgment denied the petition and dismissed the
proceeding.

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

Memorandum: Petitioner commenced this proceeding seeking a writ
of habeas corpus pursuant to CPLR article 70, contending that the
Board of Parole improperly revoked his parole release after a final
revocation hearing and remanded him to serve another 36 months of
incarceration. Supreme Court denied the petition, and we affirm.

Contrary to petitioner's contention, the Parole Board's
determination that petitioner violated the conditions of his parole is
supported by substantial evidence (*see People ex rel. Lewis v Hunt*, 72
AD3d 1630, 1631 [4th Dept 2010], *lv denied* 15 NY3d 707 [2010]; *People*
ex rel. Fletcher v Travis, 19 AD3d 1097, 1098 [4th Dept 2005], *lv*
denied 5 NY3d 709 [2005]). With respect to charge one alleging that
petitioner assaulted a female victim, we conclude that, contrary to
petitioner's contention, the Administrative Law Judge (ALJ) who
presided over the hearing was entitled to consider hearsay evidence
(*see Matter of Hampton v Kirkpatrick*, 82 AD3d 1639, 1639 [4th Dept
2011]; *People ex rel. Fryer v Beaver*, 292 AD2d 876, 876 [4th Dept
2002]; *see generally Matter of Currie v New York State Bd. of Parole*,
298 AD2d 805, 805-806 [3d Dept 2002]). Moreover, the determination
was not based solely on the hearsay evidence inasmuch as the victim's
sworn statement was submitted in evidence and two witnesses testified
at the hearing that the victim appeared frightened of petitioner and

had visible bruising. Petitioner's further contention that the ALJ violated his right to due process by permitting hearsay evidence without making a specific finding of good cause was not raised at the hearing and, thus, is not preserved for our review (see *Currie*, 298 AD2d at 806).

Regarding petitioner's challenge to charges eight and nine, which allege that petitioner possessed a knife, petitioner's parole officer testified that petitioner did not have permission to carry a knife during the relevant parole supervision time period. A witness further testified that petitioner was in possession of a folding knife. To the extent that petitioner challenges the credibility of those witnesses, the ALJ was entitled to resolve such issues of credibility (see *Matter of Johnson v Thompson*, 134 AD3d 1404, 1405 [4th Dept 2015]).