

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

710

TP 25-00077

PRESENT: WHALEN, P.J., BANNISTER, SMITH, NOWAK, AND DELCONTE, JJ.

IN THE MATTER OF BERNABE ENCARNACION, 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 (NORMAN P. EFFMAN OF
COUNSEL), FOR PETITIONER.

LETITIA JAMES, ATTORNEY GENERAL, ALBANY (RACHEL RAIMONDI 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 [Melissa Lightcap Cianfrini, A.J.], entered January 6, 2025) to review a determination of respondent. The determination found after a tier III hearing that petitioner had violated an incarcerated individual rule.

It is hereby ORDERED that said proceeding is unanimously dismissed without costs.

Memorandum: Petitioner commenced this proceeding seeking to annul a determination, following a tier III disciplinary hearing, that he violated a certain incarcerated individual rule. After Supreme Court transferred this proceeding to this Court pursuant to CPLR 7804 (g), the Attorney General advised this Court that respondent has issued an administrative order reversing the determination and that all references to the disciplinary proceeding have been expunged from petitioner's record. Because petitioner has obtained the relief that he could be granted in this proceeding, the proceeding is dismissed as moot (*see Matter of Smith v Annucci*, 173 AD3d 1685, 1685 [4th Dept 2019]; *Matter of Free v Coombe*, 234 AD2d 996, 996 [4th Dept 1996]).

Entered: October 3, 2025

Ann Dillon Flynn
Clerk of the Court