

SUPREME COURT OF THE STATE OF NEW YORK, APPELLATE DIVISION,
FOURTH JUDICIAL DEPARTMENT

Matter of Kates v. Martuscello

2026 NY Slip Op 00737 · No. 965 TP 25-00703 · Decided February 11, 2026

SUMMARY

The Appellate Division, Fourth Department unanimously confirmed a determination finding that Alexander Kates violated incarcerated individual rules concerning refusal to obey a direct order and movement regulation violations. The court held that the Hearing Officer properly denied requests for irrelevant witness testimony and that the misbehavior report, together with Kates's statement, constituted substantial evidence supporting the determination.

CASE DETAILS

COURT	Supreme Court of the State of New York, Appellate Division, Fourth Judicial Department
WRITING FOR THE COURT	Per Curiam; Curran, J.P.; Bannister, J.; Nowak, J.; DelConte, J.; Hannah, J.
JURISDICTION	Supreme Court of the State of New York, Appellate Division, Fourth Department
DECIDED	February 11, 2026
DOCKET	965 TP 25-00703
DISPOSITION	dismissed
PROCEDURAL POSTURE	CPLR article 78 proceeding transferred to the Appellate Division to review an administrative determination following a tier II disciplinary hearing.
STANDARD OF REVIEW	Whether the administrative determination was supported by substantial evidence and whether the Hearing Officer properly exercised discretion concerning witness testimony.
PRECEDENTIAL VALUE	Published opinion
PARTIES	Alexander Kates v. Daniel F. Martuscello, III, Acting Commissioner, New York State Department of Corrections and Community Supervision

TOPICS

judicial review of agency action

administrative procedure act

administrative law

appellate procedure

standard of review

PRACTICE AREAS

administrative law

prison disciplinary proceedings

civil procedure

appellate procedure

QUESTIONS PRESENTED

1. Whether the Hearing Officer improperly denied petitioner's request to call certain witnesses at the tier II disciplinary hearing.
2. Whether the misbehavior report and petitioner's statement constituted substantial evidence supporting the determination that petitioner violated rules 106.10 and 109.12.

HOLDINGS

1. An incarcerated individual has a conditional right to call witnesses, but is not entitled to call witnesses whose testimony is immaterial or redundant. The proposed testimony here was irrelevant, so the Hearing Officer properly denied the requests.
2. The misbehavior report, together with petitioner's statement that his actions were accurately described in the report, constituted substantial evidence supporting the determination that petitioner violated incarcerated-individual rules 106.10 and 109.12.

KEY QUOTATIONS

"Although an [incarcerated individual] has a 'conditional right' to call witnesses . . . , an [incarcerated individual] is not entitled to call witnesses whose testimony is immaterial or redundant" (*1)

FACTUAL BACKGROUND

Following a tier II disciplinary hearing, petitioner was found to have violated incarcerated-individual rule 106.10, prohibiting refusal to obey a direct order, and rule 109.12, concerning movement-regulation violations. Petitioner challenged the determination, arguing that the Hearing Officer improperly denied his requests to call certain witnesses and that the evidence was insufficient. The record included a misbehavior report and petitioner's statement that his actions were accurately described in that report.

PROCEDURAL HISTORY

Petitioner commenced a CPLR article 78 proceeding seeking to annul a determination that he violated incarcerated-individual rules 106.10 and 109.12. The Supreme Court, Wyoming County, transferred the proceeding to the Appellate Division, Fourth Department. The Appellate Division unanimously confirmed the determination and dismissed the petition without costs.

DISPOSITION

dismissed

CASES CITED

- Matter of Burroughs v. Corey, 235 AD3d 1251, 1252 (4th Dept 2025)
- Matter of Ballard v. Kickbush, 165 AD3d 1587, 1589 (4th Dept 2018), appeal dismissed 32 NY3d 1182 (2019)
- Matter of Jackson v. Annucci, 122 AD3d 1288, 1288-1289 (4th Dept 2014)
- Matter of Griswold v. Goord, 39 AD3d 908, 909 (3d Dept 2007)
- Matter of Melvin v. Smith, 143 AD2d 525, 525 (4th Dept 1988)

OPINION

Matter of Kates v. Martuscello 2026 NY Slip Op 00737

PER CURIAM.

Matter of Kates v Martuscello (2026 NY Slip Op 00737) Matter of Kates v Martuscello 2026 NY Slip Op 00737 Decided on February 11, 2026 Appellate Division, Fourth Department Published by New York State Law Reporting Bureau pursuant to Judiciary Law § 431. This opinion is uncorrected and subject to revision before publication in the Official Reports. Decided on February 11, 2026

SUPREME COURT OF THE STATE OF NEW YORK

Appellate Division, Fourth Judicial Department PRESENT: CURRAN, J.P., BANNISTER, NOWAK, DELCONTE, AND HANNAH, JJ. 965 TP 25-00703

[*1]IN THE MATTER OF ALEXANDER KATES, PETITIONER,

v DANIEL F. MARTUSCELLO, III, ACTING COMMISSIONER, NEW YORK STATE DEPARTMENT OF CORRECTIONS AND COMMUNITY SUPERVISION, RESPONDENT. NORMAN P. EFFMAN, PUBLIC DEFENDER, WARSAW (LEAH R. NOWOTARSKI OF COUNSEL), FOR PETITIONER. LETITIA JAMES, ATTORNEY GENERAL, ALBANY (OWEN DEMUTH 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 April 23, 2025) to review a determination of respondent. The determination found after a tier II 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 the determination, following a tier II disciplinary hearing, that he violated incarcerated individual rules 106.10 (7 NYCRR 270.2 [B] [7] [i] [refusing direct order]) and 109.12 (7 NYCRR 270.2 [B] [10] [iii] [movement regulation violation]). We reject petitioner's contentions that the Hearing Officer improperly denied his request to call certain witnesses to testify at the hearing. " 'Although

an [incarcerated individual] has a 'conditional right' to call witnesses . . . , an [incarcerated individual] is not entitled to call witnesses whose testimony is immaterial or redundant' " (Matter of Burroughs v Corey , 235 AD3d 1251 , 1252 [4th Dept 2025]; see Matter of Ballard v Kickbush , 165 AD3d 1587 , 1589 [4th Dept 2018], appeal dismissed 32 NY3d 1182 [2019]). Here, the proposed testimony of the various witnesses was irrelevant (see Matter of Jackson v Annucci , 122 AD3d 1288, 1288-1289 [4th Dept 2014]). Contrary to petitioner's further contention, the misbehavior report, together with petitioner's statement that his actions were accurately described in the misbehavior report, constitutes substantial evidence supporting the determination that he violated incarcerated individual rules 106.10 and 109.12 (see Matter of Griswold v Goord , 39 AD3d 908, 909 [3d Dept 2007]; Matter of Melvin v Smith , 143 AD2d 525, 525 [4th Dept 1988]).
Entered: February 11, 2026 Ann Dillon Flynn Clerk of the Court