

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

Matter of Gilbert v. Martuscello

2026 NY Slip Op 01897 · No. 189 TP 25-01430 · Decided March 27, 2026

SUMMARY

The Appellate Division, Fourth Department unanimously confirmed a determination made after a tier III disciplinary hearing finding that Ivan Gilbert violated incarcerated individual rules concerning a sex offense and a facility visitation violation. The court held that the misbehavior report and video evidence constituted substantial evidence supporting the determination and dismissed the CPLR article 78 petition.

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.; Montour, J.; Smith, J.; Ogden, J.; DelConte, J.
JURISDICTION	Supreme Court of the State of New York, Appellate Division, Fourth Department
DECIDED	March 27, 2026
DOCKET	189 TP 25-01430
DISPOSITION	dismissed
PROCEDURAL POSTURE	Petitioner's CPLR article 78 proceeding was transferred from Supreme Court, Wyoming County, to the Appellate Division to review a prison disciplinary determination.
STANDARD OF REVIEW	Whether the agency determination is supported by substantial evidence.
PRECEDENTIAL VALUE	Published opinion
PARTIES	Ivan Gilbert v. Daniel F. Martuscello, III, Acting Commissioner, New York State Department of Corrections and Community Supervision

TOPICS

- judicial review of agency action
- appellate procedure
- civil procedure
- standard of review

PRACTICE AREAS

administrative law

prison disciplinary proceedings

appellate procedure

civil procedure

QUESTIONS PRESENTED

1. Whether the prison disciplinary determination finding petitioner guilty of violating incarcerated-individual rules 101.10 and 180.10 was supported by substantial evidence.

HOLDINGS

1. The determination was supported by substantial evidence because the misbehavior report and video of the relevant incident constituted evidence that a reasonable mind could accept as adequate to support the finding that petitioner violated the cited incarcerated-individual rules.

KEY QUOTATIONS

“such relevant proof as a reasonable mind may accept as adequate to support a conclusion or ultimate fact”
([*1])

FACTUAL BACKGROUND

Petitioner was found after a tier III prison disciplinary hearing to have violated incarcerated-individual rule 101.10, concerning a sex offense, and rule 180.10, concerning a facility-visitation violation. The hearing officer reviewed a misbehavior report and video of the relevant incident. The Appellate Division concluded that those materials constituted substantial evidence supporting the determination.

PROCEDURAL HISTORY

Following a tier III disciplinary hearing, the respondent determined that petitioner had violated incarcerated-individual rules concerning a sex offense and a facility-visitation violation. Petitioner commenced a CPLR article 78 proceeding seeking to annul the determination. Supreme Court, Wyoming County, transferred the proceeding to the Appellate Division, Fourth Department, which confirmed the determination and dismissed the petition.

DISPOSITION

dismissed

CASES CITED

- Matter of Bottom v Annucci, 26 NY3d 983, 984-985 (2015)
- Matter of Derby v Annucci, 227 AD3d 1413, 1414 (4th Dept 2024)
- Matter of Hood v Fischer, 100 AD3d 1122, 1123-1124 (3d Dept 2012)

OPINION

Matter of Gilbert v. Martuscello 2026 NY Slip Op 01897

PER CURIAM.

Matter of Gilbert v Martuscello (2026 NY Slip Op 01897) Matter of Gilbert v Martuscello 2026 NY Slip Op 01897 Decided on March 27, 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 March 27, 2026

SUPREME COURT OF THE STATE OF NEW YORK

Appellate Division, Fourth Judicial Department

PRESENT: CURRAN, J.P., MONTOUR, SMITH, OGDEN, AND DELCONTE,

JJ. 189 TP 25-01430

[*1]IN THE MATTER OF IVAN GILBERT, PETITIONER,

v DANIEL F. MARTUSCELLO, III, ACTING COMMISSIONER,

NEW YORK STATE DEPARTMENT OF CORRECTIONS AND COMMUNITY

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

LETITIA JAMES, ATTORNEY GENERAL, ALBANY (WILLIAM M. HAYES 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 August 18, 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 disciplinary hearing, that he violated incarcerated individual rules 101.10 (7 NYCRR 270.2 [B] [2] [i] [sex offense]) and 180.10 (7 NYCRR 270.2 [B] [26] [i] [facility visitation violation]). Contrary to petitioner's contention, the determination is supported by substantial evidence, i.e., "such relevant proof as a reasonable mind may accept as adequate to support a conclusion or ultimate fact" (Matter of Bottom v Annucci , 26 NY3d 983 , 984-985 [2015] [internal quotation marks omitted]; see Matter of Derby v Annucci , 227 AD3d 1413 , 1414 [4th Dept 2024]). Specifically, the misbehavior report and video of the relevant incident reviewed by the hearing officer constitute substantial evidence to support the determination (see generally Derby , 227 AD3d at 1414; Matter of Hood v Fischer , 100 AD3d 1122, 1123-1124 [3d Dept 2012]). Entered: March 27, 2026 Ann Dillon Flynn Clerk of the Court