

**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.

OPINION

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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