

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

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**TP 08-01798**

PRESENT: SMITH, J.P., CENTRA, FAHEY, PERADOTTO, AND PINE, JJ.

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IN THE MATTER OF ENRIQUE TANTAO, PETITIONER,

V

ORDER

JAMES L. BERBARY, SUPERINTENDENT, COLLINS  
CORRECTIONAL FACILITY, AND DONALD SELSKY,  
DIRECTOR, SPECIAL HOUSING/INMATE DISCIPLINARY  
PROGRAMS, NEW YORK STATE DEPARTMENT OF  
CORRECTIONAL SERVICES, RESPONDENTS.

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ENRIQUE TANTAO, PETITIONER PRO SE.

ANDREW M. CUOMO, ATTORNEY GENERAL, ALBANY (MARCUS J. MASTRACCO OF  
COUNSEL), FOR RESPONDENTS.

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Proceeding pursuant to CPLR article 78 (transferred to the Appellate Division of the Supreme Court in the Fourth Judicial Department by order of the Erie County Court [Michael L. D'Amico, J.], entered May 1, 2008) to review a determination of respondent James L. Berbary, Superintendent, Collins Correctional Facility. The determination found after a Tier III hearing that petitioner had violated an inmate rule.

It is hereby ORDERED that said proceeding is unanimously dismissed without costs as moot (*see Matter of Free v Coombe*, 234 AD2d 996).

Entered: February 6, 2009

JoAnn M. Wahl  
Clerk of the Court