

State of New York
Supreme Court, Appellate Division
Third Judicial Department

Decided and Entered: April 26, 2018

525402

In the Matter of WAYNE P.
VANCE,
Petitioner,
v

MEMORANDUM AND JUDGMENT

NEW YORK STATE DEPARTMENT OF
CORRECTIONS AND COMMUNITY
SUPERVISION,
Respondent.

Calendar Date: March 2, 2018

Before: McCarthy, J.P., Egan Jr., Lynch, Aarons and
Pritzker, JJ.

Wayne P. Vance, Comstock, petitioner pro se.

Eric T. Schneiderman, Attorney General, Albany (Marcus J.
Mastracco of counsel), for respondent.

Proceeding pursuant to CPLR article 78 (transferred to this Court by order of the Supreme Court, entered in Albany County) to review a determination finding petitioner guilty of violating certain prison disciplinary rules.

Petitioner commenced this CPLR article 78 proceeding to challenge a determination finding him guilty of violating various prison disciplinary rules. Respondent submitted an answer with an objection asserting that petitioner had not administratively appealed the determination and, therefore, had failed to exhaust

his administrative remedies.¹ Respondent supported the objection with an affidavit from the assistant director of special housing and inmate disciplinary programs, in which he stated that he had reviewed the records and that petitioner had not submitted an administrative appeal regarding the determination at issue. Inasmuch as there is no record that petitioner filed an administrative appeal, his challenge to the determination in the context of this CPLR article 78 proceeding is precluded by his failure to exhaust his administrative remedies (see Matter of Ifill v Fischer, 79 AD3d 1322, 1322 [2010]; Matter of Hendricks v Franklin Correctional Facility, 249 AD2d 856, 856 [1998]).

McCarthy, J.P., Egan Jr., Lynch, Aarons and Pritzker, JJ.,
concur.

ADJUDGED that the petition is dismissed, without costs.

ENTER:



Robert D. Mayberger
Clerk of the Court

¹ Because the answer raised an objection that could have terminated the proceeding, Supreme Court should have ruled on that issue prior to transferring this proceeding to this Court (see CPLR 7804 [g]). Nevertheless, we shall decide the issue in the interest of judicial economy.