

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

Decided and Entered: March 5, 2020

529627

In the Matter of PAUL GRANT,
Appellant,

v

MEMORANDUM AND ORDER

MICHAEL CAPRA, as
Superintendent of Sing
Sing Correctional Facility,
Respondent.

Calendar Date: February 7, 2020

Before: Egan Jr., J.P., Mulvey, Devine, Pritzker and Reynolds
Fitzgerald, JJ.

Paul Grant, Ossining, appellant pro se.

Letitia James, Attorney General, Albany (Sarah L.
Rosenbluth of counsel), for respondent.

Appeal from a judgment of the Supreme Court (Ceresia, J.),
entered July 11, 2019 in Albany County, which, in a proceeding
pursuant to CPLR article 78, granted respondent's motion to
dismiss the petition.

Petitioner, an inmate, commenced this CPLR article 78
proceeding to challenge a determination rendered after a tier II
disciplinary hearing. Respondent moved to dismiss the petition
based upon petitioner's failure to seek administrative review of
the determination. Supreme Court granted the motion and
dismissed the petition for failure to exhaust administrative
remedies. Petitioner appeals.

During the pendency of the appeal, the Attorney General advised this Court that petitioner did, in fact, file an administrative appeal of the disciplinary determination, but that the documentation regarding the same was misfiled. Accordingly, the Attorney General has withdrawn its objection in point of law, and requests this Court to vacate the judgment dismissing the petition and to remit the matter for further proceedings. In view of this, and based upon our review of the papers submitted, we deem it appropriate to remit the matter for service of an answer and for a determination on the merits (see Matter of Lashley v Goord, 293 AD2d 849, 849 [2002]; Matter of Burr v Goord, 290 AD2d 611, 612 [2002], lv dismissed 97 NY2d 749 [2002]).

Egan Jr., J.P., Mulvey, Devine, Pritzker and Reynolds
Fitzgerald, JJ., concur.

ORDERED that the judgment is reversed, on the law, without costs, motion denied, and matter remitted to the Supreme Court to permit respondent to serve an answer within 20 days of the date of this Court's decision.

ENTER:

A handwritten signature in black ink that reads "Robert D. Mayberger". The signature is written in a cursive, slightly slanted style.

Robert D. Mayberger
Clerk of the Court