

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

Decided and Entered: January 25, 2018

524804

In the Matter of JOHNATHAN
JOHNSON,
Appellant,
v

MEMORANDUM AND ORDER

ANTHONY J. ANNUCCI, as Acting
Commissioner of Corrections
and Community Supervision,
et al.,
Respondents.

Calendar Date: December 13, 2017

Before: Garry, P.J., Egan Jr., Lynch, Clark and Mulvey, JJ.

Johnathan Johnson, Malone, appellant pro se.

Eric T. Schneiderman, Attorney General, Albany (Martin Hotvet of counsel), for respondents.

Appeal from a judgment of the Supreme Court (Feldstein, J.), entered March 7, 2017 in Franklin County, which, in a proceeding pursuant to CPLR article 78, granted respondents' motion to dismiss the petition.

Petitioner, a prison inmate, commenced this CPLR article 78 proceeding ostensibly to review a determination of respondents limiting the length of his phone calls with his then attorneys to 30 minutes. Respondents moved to dismiss the petition based on, among other things, a failure to exhaust administrative remedies. Supreme Court granted respondents' motion, finding, among other things, that relevant directives provided an avenue for inmates to seek an exception to the 30-minute limit on attorney phone

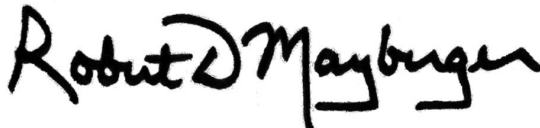
calls and that petitioner had failed to seek such an exception, thereby failing to exhaust his administrative remedies. Petitioner now appeals, and we affirm.

Petitioner failed to follow established procedure considering that he did not request approval for attorney telephone calls exceeding 30 minutes (see Dept of Corr & Community Supervision Directive No. 4423 § IX [B], [D], [E]), and therefore he failed to exhaust available administrative remedies (see Matter of Santiago v Boll, 130 AD3d 1336, 1337 [2015]; Matter of Johnson v Ricks, 278 AD2d 559, 559 [2000]; Matter of Graziano v Coughlin, 221 AD2d 684, 687 [1995]). To the extent that petitioner claims that it is unconstitutional for the Department of Corrections and Community Supervision to require inmates to request that phone calls with attorneys exceed 30 minutes, and assuming that such a claim is properly before us (see generally Matter of Connerton v Ryan, 86 AD3d 698, 699 [2011]), we find the contention to be without merit.

Garry, P.J., Egan Jr., Lynch, Clark and Mulvey, JJ., concur.

ORDERED that the judgment is affirmed, without costs.

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