

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

1076

CA 15-01813

PRESENT: WHALEN, P.J., SMITH, DEJOSEPH, NEMOYER, AND TROUTMAN, JJ.

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IN THE MATTER OF BRYAN MEDINA,  
PETITIONER-RESPONDENT,

V

MEMORANDUM AND ORDER

ANTHONY J. ANNUCCI, ACTING COMMISSIONER,  
NEW YORK STATE DEPARTMENT OF CORRECTIONS  
AND COMMUNITY SUPERVISION,  
RESPONDENT-APPELLANT.

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ERIC T. SCHNEIDERMAN, ATTORNEY GENERAL, ALBANY (MARTIN A. HOTVET OF  
COUNSEL), FOR RESPONDENT-APPELLANT.

KAREN MURTAGH, EXECUTIVE DIRECTOR, PRISONERS' LEGAL SERVICES OF NEW  
YORK, BUFFALO (DAVID W. BENTIVEGNA OF COUNSEL), FOR  
PETITIONER-RESPONDENT.

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Appeal from a judgment (denominated order) of the Supreme Court,  
Erie County (John L. Michalski, A.J.), entered July 7, 2015 in a  
proceeding pursuant to CPLR article 78. The judgment directed  
respondent to expunge from petitioner's institutional record all  
references to the incident underlying this special proceeding.

It is hereby ORDERED that the judgment so appealed from is  
unanimously affirmed without costs.

Memorandum: Contrary to respondent's contention, Supreme Court  
properly determined upon reargument that expungement of all references  
to the underlying incident from petitioner's institutional record,  
rather than remittal for a new hearing, was the appropriate remedy for  
the violation of petitioner's fundamental right to be present at his  
disciplinary hearing (*see Matter of Brooks v James*, 105 AD3d 1233,  
1234; *Matter of Rush v Goord*, 2 AD3d 1185, 1186; *see also Matter of  
Bowen v Coombe*, 239 AD2d 960, 960-961). This is not a case in which  
the record is unclear with respect to whether petitioner's right to be  
present was in fact violated (*cf. Matter of Teixeira v Fischer*, 26 NY3d  
230, 234-235; *Matter of Shoga v Annucci*, 132 AD3d 1338, 1339).

Entered: November 18, 2016

Frances E. Cafarell  
Clerk of the Court