

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

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TP 18-00194

PRESENT: SMITH, J.P., PERADOTTO, DEJOSEPH, TROUTMAN, AND WINSLOW, JJ.

IN THE MATTER OF ECHO WESTLEY DIXON, PETITIONER,

V

MEMORANDUM AND ORDER

GOV. ANDREW M. CUOMO, ANTHONY ANNUCCI, ACTING
COMMISSIONER, NEW YORK STATE DEPARTMENT OF
CORRECTIONS AND COMMUNITY SUPERVISION, ET AL.,
RESPONDENTS.

ECHO WESTLEY DIXON, PETITIONER PRO SE.

BARBARA D. UNDERWOOD, ATTORNEY GENERAL, ALBANY (KATE H. NEPVEU OF
COUNSEL), FOR RESPONDENTS.

Proceeding pursuant to CPLR article 78 (transferred to the Appellate Division of the Supreme Court in the Fourth Judicial Department by order of the Supreme Court, Cayuga County [Mark H. Fandrich, A.J.], entered January 23, 2018) to review a determination of respondent Anthony Annucci, Acting Commissioner, New York State Department of Corrections and Community Supervision. 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.

Memorandum: Petitioner commenced this proceeding, which includes, inter alia, a cause of action seeking to annul the determination of Anthony Annucci, Acting Commissioner of the New York State Department of Corrections and Community Supervision (respondent), made after a tier III hearing, that petitioner violated inmate rule 113.24 (7 NYCRR 270.2 [B] [14] [xiv] [drug use]). Supreme Court entered an order in November 2017 dismissing all of the other causes of action in the petition, and entered a further order in December 2017 denying petitioner's motion for leave to reargue the November order. Petitioner filed a notice of appeal with respect to those orders and sought review in the Court of Appeals, which issued an order transferring that appeal to this Court (*Dixon v Cuomo*, 30 NY3d 1086, 1086 [2018]), but petitioner has not filed a record or taken any steps to perfect that appeal in this Court. Thereafter, Supreme Court, pursuant to CPLR 7804 (g), transferred that part of the petition seeking review of the inmate disciplinary proceeding to this Court.

In his brief to this Court, however, petitioner challenges only the dismissal of the other causes of action. Inasmuch as this transferred proceeding concerns only the determination that petitioner violated the inmate rule at issue, and petitioner does not raise any arguments with respect thereto in his brief to this Court, his "challenge to [that] determination is deemed abandoned" (*Matter of Lamage v Bezio*, 74 AD3d 1676, 1676 [3d Dept 2010]; see *Matter of Alvarez v Fischer*, 94 AD3d 1404, 1405 [4th Dept 2012]), and the proceeding must be dismissed.

Entered: February 1, 2019

Mark W. Bennett
Clerk of the Court