

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

**931**

**CA 09-00134**

PRESENT: SCUDDER, P.J., SMITH, CENTRA, PERADOTTO, AND GREEN, JJ.

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IN THE MATTER OF ANDREW PRATT,  
PETITIONER-APPELLANT,

V

MEMORANDUM AND ORDER

MICHAEL HOGAN, COMMISSIONER, NEW YORK STATE  
OFFICE OF MENTAL HEALTH, AND DONALD SAWYER,  
DIRECTOR OF CENTRAL NEW YORK PSYCHIATRIC  
CENTERS, RESPONDENTS-RESPONDENTS.

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ANDREW PRATT, PETITIONER-APPELLANT PRO SE.

ANDREW M. CUOMO, ATTORNEY GENERAL, ALBANY (MARTIN A. HOTVET OF  
COUNSEL), FOR RESPONDENTS-RESPONDENTS.

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Appeal from a judgment (denominated order) of the Supreme Court, Oneida County (Anthony F. Shaheen, J.), entered December 18, 2008 in a proceeding pursuant to CPLR article 78. The judgment dismissed the petition.

It is hereby ORDERED that the judgment so appealed from is unanimously reversed on the law without costs and the petition is reinstated.

Memorandum: Petitioner, who is civilly confined pursuant to article 10 of the Mental Hygiene Law, commenced this CPLR article 78 proceeding alleging that his constitutional rights have been violated because he is an atheist and he is required to attend treatment programs with religious-based content. We note at the outset that, because petitioner alleges a violation of his constitutional rights, he was not required to exhaust his administrative remedies prior to commencing this proceeding pursuant to CPLR article 78 (*see generally Watergate II Apts. v Buffalo Sewer Auth.*, 46 NY2d 52, 57). Specifically, petitioner contends that as part of the sex offender treatment program he is required to participate in dialectical behavior therapy, which utilizes "skills based on Eastern philosophy and spiritual training, which are compatible with most Western contemplative and Eastern meditation practices." He further contends that he is required to participate in Alcoholics Anonymous, which has religious-based content (*see generally Matter of Griffin v Coughlin*, 88 NY2d 674, 677). Respondents correctly concede that the objections in point of law set forth in their answer fail to address the allegations in the petition and instead address only the constitutionality of article 10 of the Mental Hygiene Law, which was

not contested by petitioner. We therefore conclude that Supreme Court erred in dismissing the petition based on respondents' objections in point of law (*see generally* CPLR 7804 [f]).

Entered: July 2, 2009

Patricia L. Morgan  
Clerk of the Court