

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

**945**

**TP 15-00425**

PRESENT: SMITH, J.P., CARNI, LINDLEY, VALENTINO, AND DEJOSEPH, JJ.

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IN THE MATTER OF JERMAINE FANN, PETITIONER,

V

MEMORANDUM AND ORDER

L.T. BRIGHT AND SUPERINTENDENT DOLCE,  
RESPONDENTS.

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JERMAINE FANN, PETITIONER PRO SE.

ERIC T. SCHNEIDERMAN, ATTORNEY GENERAL, ALBANY (PETER H. SCHIFF OF  
COUNSEL), FOR RESPONDENTS.

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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, Orleans County [James P. Punch, A.J.], entered March 10, 2015) to review a determination of respondents. The determination found after a tier II hearing that petitioner had violated various inmate rules.

It is hereby ORDERED that the order transferring this proceeding is unanimously vacated without costs.

Memorandum: Petitioner commenced this CPLR article 78 proceeding seeking to annul the determination, following a tier II disciplinary hearing, that he violated certain inmate rules. Supreme Court denied the petition, and petitioner filed a notice of appeal from the judgment. Rather than perfecting his appeal from the judgment, however, petitioner moved to transfer the proceeding to this Court pursuant to CPLR 7804 (g), and the court granted the motion. That was error, inasmuch as the proceeding terminated in the judgment, and thus there was no proceeding pending in Supreme Court that could be transferred pursuant to CPLR 7804 (g). Instead, petitioner's remedy was to perfect his appeal. We therefore vacate as void the order transferring the proceeding to this Court (*see generally Matter of Drumm v Shah*, 107 AD3d 1476, 1476).

Entered: October 9, 2015

Frances E. Cafarell  
Clerk of the Court