

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

1166

CA 14-02249

PRESENT: SCUDDER, P.J., CENTRA, CARNI, WHALEN, AND DEJOSEPH, JJ.

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IN THE MATTER OF ROBERT REED,  
PETITIONER-APPELLANT,

V

MEMORANDUM AND ORDER

ANTHONY ANNUCCI, ACTING COMMISSIONER, NEW YORK  
STATE DEPARTMENT OF CORRECTIONS AND COMMUNITY  
SUPERVISION, RESPONDENT-RESPONDENT.  
(APPEAL NO. 1.)

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ROBERT I. REED, PETITIONER-APPELLANT PRO SE.

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

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Appeal from a judgment of the Supreme Court, Wyoming County  
(Michael M. Mohun, A.J.), entered October 2, 2014 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 affirmed without costs.

Memorandum: Petitioner, an inmate in the custody of respondent  
New York State Department of Corrections and Community Services  
(DOCCS), commenced this CPLR article 78 proceeding challenging his  
commitment to the custody of DOCCS on the ground that it was not  
authorized by the sentencing court, i.e., Niagara County Court.  
Supreme Court properly dismissed the petition. It is of no  
consequence that the sentencing court, in imposing petitioner's  
sentence, did not explicitly commit him to the custody of DOCCS,  
inasmuch "as the imposed sentence could only be served in a state  
facility" (*People ex rel. Hurley v Jubert*, 56 AD3d 915, 915, *lv denied*  
12 NY3d 703, citing Penal Law § 70.20 [1] [a]). In addition, we agree  
with DOCCS that the petition was subject to dismissal on the further  
ground that petitioner failed to join Niagara County Court as a  
necessary party, inasmuch as DOCCS had no authority to alter the  
commitment order (*see Matter of Reed v Fischer*, 79 AD3d 1517, 1517-  
1518; *Matter of Reed v Travis*, 19 AD3d 829, 830, *lv denied* 5 NY3d  
708).

Entered: November 20, 2015

Frances E. Cafarell  
Clerk of the Court