

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

1598

CA 09-00557

PRESENT: HURLBUTT, J.P., SMITH, FAHEY, AND CARNI, JJ.

IN THE MATTER OF DAVID DUDAS,
PETITIONER-APPELLANT,

V

MEMORANDUM AND ORDER

BRIAN FISCHER, COMMISSIONER, NEW YORK
STATE DEPARTMENT OF CORRECTIONAL SERVICES,
RESPONDENT-RESPONDENT.

DAVID DUDAS, PETITIONER-APPELLANT PRO SE.

ANDREW M. CUOMO, ATTORNEY GENERAL, ALBANY (ANDREW B. AYERS OF
COUNSEL), FOR RESPONDENT-RESPONDENT.

Appeal from a judgment (denominated order) of the Supreme Court, Wyoming County (Mark H. Dadd, A.J.), entered February 11, 2009 in a proceeding pursuant to CPLR article 78. The judgment granted the motion of respondent to dismiss the petition.

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

Memorandum: As Supreme Court properly determined in this CPLR article 78 proceeding seeking to annul the determination that petitioner should participate in a sex offender treatment program, petitioner failed to exhaust his administrative remedies before commencing this proceeding. Thus, the court properly dismissed the petition (*see Matter of Muniz v David*, 16 AD3d 939, 939-940).

Entered: December 30, 2009

Patricia L. Morgan
Clerk of the Court