

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

1502

CA 08-00789

PRESENT: HURLBUTT, J.P., PERADOTTO, CARNI, PINE, AND GORSKI, JJ.

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IN THE MATTER OF MITCHELL KALWASINSKI,  
PETITIONER-APPELLANT,

V

MEMORANDUM AND ORDER

BRIAN FISCHER, COMMISSIONER, NEW YORK STATE  
DEPARTMENT OF CORRECTIONAL SERVICES,  
RESPONDENT-RESPONDENT.  
(APPEAL NO. 1.)

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MITCHELL KALWASINSKI, PETITIONER-APPELLANT PRO SE.

ANDREW M. CUOMO, ATTORNEY GENERAL, ALBANY (FRANK BRADY OF COUNSEL),  
FOR RESPONDENT-RESPONDENT.

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Appeal from a judgment of the Supreme Court, Wyoming County (Mark H. Dadd, A.J.), entered March 26, 2008 in a proceeding pursuant to CPLR article 78. The judgment, insofar as appealed from, dismissed the petition in part.

It is hereby ORDERED that said appeal from the judgment insofar as it concerned grievance Nos. A-50776-06, A-50902-06, A-50921-06, A-50926-06, A-51084-06, and A-51199-06 is unanimously dismissed and the judgment is otherwise affirmed without costs.

Memorandum: These consolidated appeals arise from two judgments that collectively dismissed a single petition in a proceeding pursuant to CPLR article 78. In appeal No. 1, petitioner appeals from a judgment that dismissed those parts of the petition in which he sought to annul the determinations of the Central Office Review Committee of the Department of Correctional Services concerning 10 separate grievances. Upon our review of the record, we conclude that petitioner failed to demonstrate that the denial of four of those grievances, concerning the purported confiscation of his legal papers (grievance No. A-50949-06), reduction in time to be served in the special housing unit (grievance Nos. A-50903-06, A-51003-06) and the conduct of his correction counselor (grievance No. A-51332-06), were affected by an error of law or were arbitrary and capricious (*see Matter of Bryant v Brunelle*, 284 AD2d 936; *see also Matter of Wilson v State of N.Y. Dept. of Correctional Servs.*, 261 AD2d 670, *appeal dismissed* 93 NY2d 1039).

The contentions of petitioner concerning the remaining six grievances are based upon challenges to the conditions of his

incarceration at Attica Correctional Facility, but petitioner has since been transferred to another correctional facility. He therefore is no longer aggrieved with respect to the determinations concerning those six grievances, and his appeal from the judgment in appeal No. 1 insofar as it concerned those grievances is moot (*see Matter of McKenna v Goord*, 245 AD2d 1074, 1075, *lv denied* 91 NY2d 812; *see also Matter of Parrilla v Donelli*, 25 AD3d 1046).

In appeal No. 2, petitioner appeals from a judgment dismissing the remaining part of the petition, which challenged the accuracy of respondent's institutional records. Contrary to petitioner's contention, Supreme Court properly dismissed that part of the petition because petitioner failed to exhaust his administrative remedies with respect to the accuracy of those records (*see* 7 NYCRR 5.52; *Matter of Dickens v Irvin*, 214 AD2d 1006, 1006-1007).