

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

1246

CA 14-01443

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

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IN THE MATTER OF ELVIS CASTILLO,  
PETITIONER-APPELLANT,

V

MEMORANDUM AND ORDER

ANTHONY ANNUCCI, ACTING COMMISSIONER, NEW YORK  
STATE DEPARTMENT OF CORRECTIONS AND COMMUNITY  
SUPERVISION, RESPONDENT-RESPONDENT.

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WYOMING COUNTY-ATTICA LEGAL AID BUREAU, WARSAW (LEAH R. NOWOTARSKI OF  
COUNSEL), FOR PETITIONER-APPELLANT.

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

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Appeal from an amended judgment of the Supreme Court, Wyoming  
County (Michael M. Mohun, A.J.), entered April 16, 2014 in a  
proceeding pursuant to CPLR article 78. The amended judgment  
dismissed the petition.

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

Memorandum: Petitioner commenced this proceeding pursuant to  
CPLR article 78 challenging respondent's denial of two inmate  
grievances he filed while he was incarcerated at Attica Correctional  
Facility and Upstate Correctional Facility. Because petitioner failed  
to exhaust his administrative remedies, Supreme Court properly  
dismissed the petition. "It is hornbook law that one who objects to  
the act of an administrative agency must exhaust available  
administrative remedies before being permitted to litigate in a court  
of law" (*Watergate II Apts. v Buffalo Sewer Auth.*, 46 NY2d 52, 57; see  
*Matter of Bennefield v Annucci*, 122 AD3d 1329, 1331). Moreover, there  
is no basis in the record for us to conclude that exhaustion is not  
required because "pursuit of the administrative [process] would have  
been futile" (*People ex rel. Martinez v Beaver*, 8 AD3d 1095, 1095).

Entered: November 20, 2015

Frances E. Cafarell  
Clerk of the Court