Note: Decisions of a three-justice panel are not to be considered as precedent before any tribunal.

ENTRY ORDER

SUPREME COURT DOCKET NO. 2006-172

SEPTEMBER TERM, 2006

Edwin A. Towne, Jr.	}	APPEALED FROM:
	}	
v.	}	Windham Superior Court
	}	
State of Vermont	}	
	}	DOCKET NO. 391-9-05 Wmcv

Trial Judge: John P. Wesley

In the above-entitled cause, the Clerk will enter:

Petitioner Edwin A. Towne, Jr. appeals pro se from the trial court=s dismissal of his complaint, which sought the production of various public records. He raises numerous claims of error. We affirm.

Petitioner is incarcerated. In September 2005, he filed a petition in Chittenden Superior Court seeking ten specified public records and two other copies of court rulings. The superior court clerk forwarded the petition to the Windham Superior Court, presumably because the petition referenced a conviction in that court. The State moved to dismiss the complaint, and in December 2005, the trial court granted its request. The court explained that it was unclear if petitioner intended his complaint to sound in post-conviction relief or as a complaint for violation of the access to public records act. The court found dismissal warranted in either event. As the court

explained, if petitioner was seeking the production of public records, he failed to plead exhaustion of administrative remedies. If he was seeking post-conviction relief, then the petition failed on its face to describe any basis for such relief. Petitioner filed a motion for reconsideration, which was denied, and this appeal followed.

On appeal, petitioner argues that: (1) the Chittenden Superior Court clerk erred in transferring the motion to the Windham Superior Court; (2) the trial court erred in dismissing the complaint because requesting the records from a state agency would have been futile; and (3) the court erred in denying petitioner=s motion to have a state agency search for these records at state expense because he was proceeding in forma pauperis.*

These arguments are without merit. Petitioner=s complaint, which sought the production of public records, was properly dismissed because petitioner failed to exhaust his administrative remedies. The proper procedure for requesting public documents is set forth in 1 V.S.A. " 318 & 319. Petitioner failed to follow this procedure. We have Aconsistently held that when administrative remedies are established by statute or regulation, a party must pursue, or >exhaust,= all such remedies before turning to the courts for relief.@ Rennie v. State, 171 Vt. 584, 585 (2000). As we have explained, A[t]his long settled rule of judicial administration serves the dual purposes of protecting the authority of the administrative agency and promoting judicial efficiency.@ Id. (quotation omitted). Because petitioner failed to prove that he had made a specific request of the custodian of records and that his request was denied, he was not entitled to seek judicial relief. His complaint was therefore properly dismissed.

Petitioner offers no basis for reaching a contrary conclusion. Even assuming that the court clerk erred in transferring the case to Windham Superior Court, the same result would have obtained had the case remained in Chittenden Superior Court. Second, there is no legal support for petitioner=s assertion that he is entitled to circumvent the exhaustion requirement merely because his request for records would have been Afutile.@ Finally, it does not appear from the record that petitioner asked the court to direct a state agency to conduct a record search at state expense. Even if petitioner had made such a request, however, the request would have been properly denied given petitioner=s failure to exhaust his administrative remedies.

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Affirmed.

BY THE COURT:

_____

Paul L. Reiber, Chief Justice

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Denise R. Johnson, Associate Justice

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Brian L. Burgess, Associate Justice

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[*] In reviewing petitioner=s claims of error, we have not considered those materials that are outside of the record below, including various letters that were not presented to the trial court. Hoover v. Hoover, 171 Vt. 256, 258 (2000) (Supreme Court=s review is confined to the record and evidence adduced at trial; Court cannot consider facts not in the record).