

State of New York
Supreme Court, Appellate Division
Third Judicial Department

Decided and Entered: August 2, 2012

511350

CARLTON CLARKE,

Appellant,

v

MEMORANDUM AND ORDER

JOSEPH T. SMITH et al.,

Respondents.

Calendar Date: June 6, 2012

Before: Mercure, J.P., Lahtinen, Kavanagh, McCarthy and
Egan Jr., JJ.

Carlton Clarke, Wallkill, appellant pro se.

Eric T. Schneiderman, Attorney General, Albany (Kathleen M.
Treasure of counsel), for respondents.

Appeal from an order of the Supreme Court (Melkonian, J.),
entered September 28, 2010 in Ulster County, which granted
defendants' motion to dismiss the complaint.

In June 2010, plaintiff, an inmate at Shawangunk
Correctional Facility in Ulster County, filed the instant summons
and complaint alleging deliberate indifference to his medical
care by various prison officials. He thereafter attempted to
effect service upon defendants Joseph T. Smith and Chang Lee by
way of the institutional mail at Shawangunk, and upon defendant
Karen Bellamy via regular mail. Defendants thereafter
successfully moved to dismiss the complaint for lack of personal
jurisdiction and, upon plaintiff's appeal, we now affirm.

Inasmuch as he failed to either (1) personally deliver the
summons to defendants, or (2) deliver same to defendants by

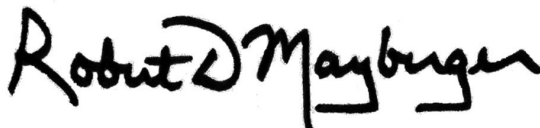
certified mail in conjunction with personal delivery upon an Assistant Attorney General, there can be no question that plaintiff failed to properly serve defendants in the manner required by law (see CPLR 307 [2]; Hilaire v Dennison, 24 AD3d 1152 [2005]). Nor can it be said that plaintiff's attempts at service satisfied the alternative requirements of CPLR 312-a. Plaintiff improperly delivered the summons and complaint to Smith and Lee by institutional mail and, with regard to Bellamy, his mailing failed to include the required statements of service and acknowledgments of receipt (see CPLR 312-a [a], [d]; Strong v Bi-Lo Wholesalers, 265 AD2d 745, 745 [1999]). Moreover, plaintiff's later attempts to correct service were ineffectual due to his failure to include the summons and complaint in his mailings to defendants (see CPLR 312-a [a]). We note in conclusion that "[w]hen the requirements for service of process have not been met, it is irrelevant that [the] defendant may have actually received the documents" (Raschel v Rish, 69 NY2d 694, 697 [1986]), because "[n]otice received by means other than those authorized by statute does not bring a defendant within the jurisdiction of the court" (Macchia v Russo, 67 NY2d 592, 595 [1986]; see Matter of Gerdts v State of New York, 210 AD2d 645, 646 [1994], appeal dismissed 85 NY2d 856 [1995], lv denied 85 NY2d 810 [1995]).

Plaintiff's remaining arguments have not been preserved for our review.

Mercure, J.P., Lahtinen, Kavanagh, McCarthy and Egan Jr., JJ., concur.

ORDERED that the order is affirmed, without costs.

ENTER:



Robert D. Mayberger
Clerk of the Court