

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

Decided and Entered: August 2, 2012

513347

In the Matter of PHILIP
ROBINSON,
Appellant,
v

MEMORANDUM AND ORDER

SERGEANT BRUCE H. FOREMAN
et al.,
Respondents.

Calendar Date: June 6, 2012

Before: Peters, P.J., Rose, Lahtinen, Malone Jr. and
McCarthy, JJ.

Philip Robinson, Stormville, appellant pro se.

Eric T. Schneiderman, Attorney General, Albany (Frank K.
Walsh of counsel), for respondents.

Appeal from a judgment of the Supreme Court (Devine, J.),
entered September 6, 2011 in Albany County, which, in a
proceeding pursuant to CPLR article 78, granted respondents'
motion to dismiss the petition.

Following petitioner's removal from his program assignment
as a baker in the mess hall due to poor performance, he filed a
grievance challenging his removal from his mess hall position, as
well as requesting reinstatement to the program and the removal
from his institutional file of any false information pertaining
to the incident. By decision dated December 23, 2009, the
Central Office Review Committee ultimately affirmed the
determination of respondent Superintendent of Green Haven
Correctional Facility to the extent that it upheld his removal

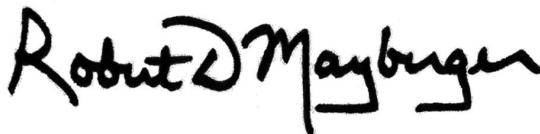
from the program. As for petitioner's requests regarding reinstatement and expungement of information from his institutional file, the Central Office Review Committee advised petitioner of the proper procedure to address such issues. Thereafter, petitioner commenced this CPLR article 78 proceeding in March 2011. Supreme Court granted respondents' pre-answer motion to dismiss the petition as time-barred and this appeal ensued.

We affirm. The record clearly demonstrates that this CPLR article 78 proceeding was commenced more than four months after the administrative determination became final and binding (see CPLR 217 [1]; see also Matter of Jackson v Fischer, 78 AD3d 1335 [2010], lv denied 16 NY3d 705 [2011]). Accordingly, the petition was properly dismissed. Petitioner's continued inquiries regarding his reinstatement to the program and the accuracy of his records "did not toll the statute of limitations or constitute a further administrative step in the grievance process" (Matter of Detorres v Goord, 40 AD3d 1306, 1307 [2007]).

Peters, P.J., Rose, Lahtinen, Malone Jr. and McCarthy, JJ., concur.

ORDERED that the judgment is affirmed, without costs.

ENTER:

A handwritten signature in black ink that reads "Robert D. Mayberger". The signature is written in a cursive, slightly slanted style.

Robert D. Mayberger
Clerk of the Court