

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

Decided and Entered: March 26, 2015

518027

In the Matter of ROBERT JONES,
Appellant,

v

KEVIN P. HICKEY, as Assistant
Attorney General of the
State of New York,
Respondent.

MEMORANDUM AND ORDER

Calendar Date: February 11, 2015

Before: McCarthy, J.P., Egan Jr., Devine and Clark, JJ.

Robert Jones, Coxsackie, appellant pro se.

Eric T. Schneiderman, Attorney General, Albany (Marcus J. Mastracco of counsel), for respondent.

Egan Jr., J.

Appeal from a judgment of the Supreme Court (Elliott III, J.), entered October 22, 2013 in Greene County, which, in a proceeding pursuant to CPLR article 78, granted respondent's motion to dismiss the petition.

Petitioner, a prison inmate, commenced this CPLR article 78 proceeding seeking to revisit the denial of a prior application for a writ of habeas corpus.¹ Supreme Court granted respondent's

¹ Subsequently, this Court affirmed the judgment denying petitioner's application for the writ of habeas corpus (People ex rel. Jones v Martuscello, 111 AD3d 1184 [2013], appeal dismissed

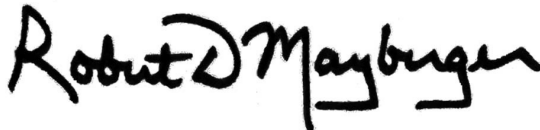
motion to dismiss the petition and petitioner now appeals.

We affirm. Inasmuch as the relief requested by petitioner is outside the scope of a CPLR article 78 proceeding, Supreme Court properly dismissed the petition upon that ground (see CPLR 7803). Moreover, to the extent that Supreme Court treated the petition as a motion to renew, we agree that petitioner failed to demonstrate that the alleged newly discovered evidence underlying the motion "could not have been discovered sooner through the exercise of due diligence and that it would likely produce a different result" (Matter of Vega v Fischer, 108 AD3d 955, 955 [2013], lv dismissed 22 NY3d 953 [2013]; see CPLR 2221). Petitioner's remaining claims have been considered and found to be without merit.

McCarthy, J.P., Devine and Clark, 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