

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

Decided and Entered: January 26, 2017

520022

In the Matter of LEO A.
MARINO,

Appellant,

v

MEMORANDUM AND ORDER

ANTHONY J. ANNUCCI, as Acting
Commissioner of Corrections
and Community Supervision,
Respondent.

Calendar Date: November 29, 2016

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

Leo A. Marino, Malone, appellant pro se.

Eric T. Schneiderman, Attorney General, Albany (William Storrs of counsel), for respondent.

Appeal from a judgment of the Supreme Court (Collins, J.), entered October 6, 2014 in Albany County, which, in a proceeding pursuant to CPLR article 78, granted respondent's motion to dismiss the petition.

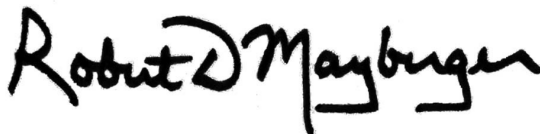
Petitioner sought to commence this proceeding challenging multiple determinations that denied various grievances filed by him, as well as requests for information that he filed under the Freedom of Information Law. Respondent moved to dismiss the petition for lack of jurisdiction due to petitioner's failure to timely serve respondent and the Attorney General on or before the date set forth in the order to show cause. Supreme Court granted the motion, and this appeal ensued.

We affirm. It is well established that failure of an inmate to comply with the directives set forth in an order to show cause will result in dismissal of the petition for lack of personal jurisdiction, unless the inmate demonstrates that imprisonment presented obstacles beyond his or her control which prevented compliance (see Matter of Ciochenda v Department of Correctional Servs., 68 AD3d 1363, 1363 [2009]; Matter of Thomas v Selsky, 34 AD3d 904, 904 [2006]). Petitioner has failed to make such a showing here. Although petitioner claims that the delay in service was due to the purported delay by prison officials in processing his request for copy disbursements in order to make the necessary photocopies, he offers no explanation as to why such request was made over two weeks after the order to show cause was signed. As such, we are unpersuaded that petitioner made the necessary showing that the delay in the service requirement was attributable solely to obstacles beyond his control (see Matter of Thomas v Selsky, 34 AD3d at 904-905; Matter of Davis v Goord, 20 AD3d 785, 786 [2005], 1v dismissed and denied 5 NY3d 861 [2005]).

McCarthy, J.P., Egan Jr., Rose, Clark and Aarons, JJ.,
concur.

ORDERED that the judgment is affirmed, without costs.

ENTER:

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

Robert D. Mayberger
Clerk of the Court