

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

Decided and Entered: July 6, 2017

523014

In the Matter of KENNETH
McMASTER,
Petitioner,

v

MEMORANDUM AND JUDGMENT

DONALD VENETTOZZI, as Acting
Director of Special Housing
and Inmate Disciplinary
Programs, et al.,
Respondents.

Calendar Date: May 9, 2017

Before: Peters, P.J., Garry, Egan Jr., Lynch and Rose, JJ.

Kenneth McMaster, Attica, petitioner pro se.

Eric T. Schneiderman, Attorney General, Albany (Victor Paladino of counsel), for respondents.

Proceeding pursuant to CPLR article 78 (transferred to this Court by order of the Supreme Court, entered in Chemung County) to review a determination of respondent Commissioner of Corrections and Community Supervision finding petitioner guilty of violating certain prison disciplinary rules.

In December 2014, petitioner was found guilty of violating the prison disciplinary rules that prohibit possessing excess stamps, gang-related material, personal information of facility employees, contraband and marihuana, and the determination was affirmed on administrative review. In March 2015, petitioner commenced a CPLR article 78 proceeding in the Supreme Court in Albany County challenging the determination. The proceeding was

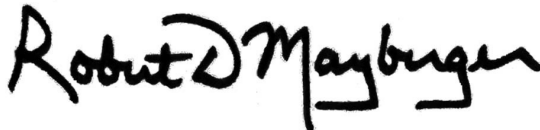
transferred to this Court, and we confirmed the determination in April 2016 (Matter of McMaster v Annucci, 138 AD3d 1289 [2016], lv denied 28 NY3d 902 [2016]).

In the interim, petitioner commenced the instant proceeding in Supreme Court in Chemung County in April 2015 – also challenging the December 2014 prison disciplinary determination and citing the same grounds as those relied upon in the petition filed in Albany County. Petitioner subsequently informed Supreme Court in Chemung County of the proceeding that had been commenced in Albany County, indicated that his claims would be adjudicated in Albany County and requested that Supreme Court return his petition to him. Under these circumstances, the petition filed in Chemung County should have been dismissed by Supreme Court.

Peters, P.J., Garry, Egan Jr., Lynch and Rose, JJ., concur.

ADJUDGED that the petition is dismissed, 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