

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

Decided and Entered: May 18, 2017

523824

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In the Matter of CURTIS  
LITTLEJOHN,  
Appellant,

v

MEMORANDUM AND ORDER

NEW YORK STATE DEPARTMENT OF  
CORRECTIONS AND COMMUNITY  
SUPERVISION,  
Respondent.

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Calendar Date: April 4, 2017

Before: Peters, P.J., Garry, Rose, Clark and Mulvey, JJ.

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Curtis Littlejohn, Malone, appellant pro se.

Eric T. Schneiderman, Attorney General, Albany (Laura Etlinger of counsel), for respondent.

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Appeal from a judgment of the Supreme Court (Feldstein, J.), entered April 11, 2016 in Franklin County, which, in a proceeding pursuant to CPLR article 78, granted respondent's motion to dismiss the petition.

On February 19, 2015, petitioner's application for participation in a shock incarceration program was denied. Thereafter, petitioner attempted to administratively appeal that determination, but was subsequently informed on March 17, 2015 that no administrative appeal process exists for the denial of shock incarceration participation. Thereafter, in May 2015, petitioner commenced a CPLR article 78 proceeding by order to show cause filed in Dutchess County challenging the determination. Supreme Court (Sproat, J.) granted respondent's

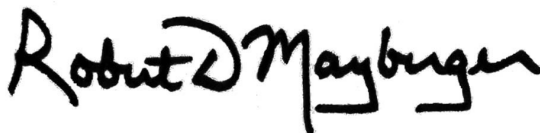
motion to dismiss that proceeding for lack of personal jurisdiction. Thereafter, petitioner commenced this CPLR article 78 proceeding by petition filed September 23, 2015, which was subsequently amended, upon consent of respondent. Supreme Court (Feldstein, J.) granted respondent's motion to dismiss the amended petition as time-barred, and this appeal ensued.

We affirm. The record demonstrates that petitioner, who was aware in March 2015 that his application to participate in the shock incarceration program was denied, did not commence this CPLR article 78 proceeding within the applicable four-month statutory time period (see CPLR 217 [1]; Matter of Robinson v Foreman, 98 AD3d 765, 766 [2012]). Although petitioner timely filed a petition by order to show cause in Dutchess County, that proceeding was dismissed for lack of personal jurisdiction and, thus, the tolling provisions of CPLR 205 (a) are inapplicable. In view of the foregoing, Supreme Court properly dismissed the amended petition as untimely.

Peters, P.J., Garry, Rose, Clark and Mulvey, 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