

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

Decided and Entered: September 21, 2017

524183

In the Matter of WAYNE
WASHINGTON,
Appellant,

v

MEMORANDUM AND ORDER

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

Calendar Date: August 7, 2017

Before: Peters, P.J., McCarthy, Lynch, Mulvey and Aarons, JJ.

Wayne Washington, Napanoch, appellant pro se.

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

Appeal from a decision of the Supreme Court (McKeighan, J.), dated August 24, 2016 in Washington County, which, in a proceeding pursuant to CPLR article 78, granted respondent's motion to dismiss the petition.

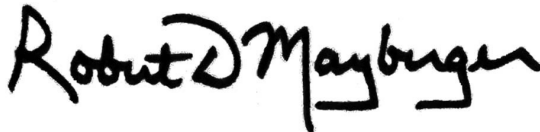
Petitioner sought to commence a CPLR article 78 proceeding challenging a determination finding him guilty of violating certain prison disciplinary rules. Respondent moved to dismiss the petition on the ground that petitioner failed to timely serve respondent and the Attorney General in accordance with the order to show cause. Supreme Court, by decision dated August 24, 2016, granted the motion to dismiss the petition and this appeal ensued. As there is no language in Supreme Court's decision that it is either a judgment or order of the court and no such

judgment was entered, this Court lacks jurisdiction at this time and the appeal must be dismissed (see CPLR 5512 [1]; Matter of Graziano v County of Albany, 12 AD3d 819, 820 [2004]).

Peters, P.J., McCarthy, Lynch, Mulvey and Aarons, JJ.,
concur.

ORDERED that the appeal 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