

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

Decided and Entered: June 27, 2019

527377

In the Matter of DONTIE S.
MITCHELL,
Appellant,

v

MEMORANDUM AND ORDER

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

Calendar Date: May 24, 2019

Before: Clark, J.P., Mulvey, Devine, Aarons and Rumsey, JJ.

Dontie S. Mitchell, Comstock, appellant pro se.

Letitia James, Attorney General, Albany (Martin A. Hotvet
of counsel), for respondent.

Appeals (1) from a judgment of the Supreme Court (Nichols, J.), entered May 24, 2018 in Albany County, which, in a proceeding pursuant to CPLR article 78, granted respondent's motion to dismiss the petition, and (2) from a judgment of said court, entered June 29, 2018 in Albany County, which denied petitioner's motion to reargue.

Petitioner commenced this CPLR article 78 proceeding challenging a tier III disciplinary determination rendered on July 24, 2017. Supreme Court granted respondent's motion to dismiss the petition for failure to comply with the pleading requirements set forth in CPLR 3013 and 3014. Petitioner's

subsequent motion to reargue was denied. Petitioner appeals from both judgments.¹

Respondent now withdraws his objection to the sufficiency of the petition. Our review of the petition confirms that the petition is sufficiently particular as to the disciplinary determination at issue and the challenge thereto (see CPLR 3013, 3014). As such, the petition should not have been dismissed. Given that respondent has not had the opportunity to submit an answer, the matter must be remitted to Supreme Court for further proceedings (see Matter of Hammond v LaValley, 117 AD3d 1266, 1266 [2014]; Matter of Sital v Fischer, 76 AD3d 723, 724 [2010]).

Clark, J.P., Mulvey, Devine, Aarons and Rumsey, JJ., concur.

ORDERED that the judgment entered May 24, 2018 is reversed, on the law, without costs, motion denied, and matter remitted to the Supreme Court to permit respondent to serve an answer within 20 days of the date of this Court's decision.

¹ As no appeal lies from the denial of a motion to reargue, the appeal from the judgment entered June 29, 2018 must be dismissed (see Matter of Barnes v Annucci, 144 AD3d 1286, 1287 [2016]).

ORDERED that the appeal from the judgment entered June 29, 2018 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