

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

Decided and Entered: April 23, 2020

528213

In the Matter of SHELDON
COOPER JR.,
Appellant,

v

MEMORANDUM AND ORDER

ANTHONY J. ANNUCCI, as Acting
Commissioner of Corrections
and Community Supervision,
et al.,
Respondents.

Calendar Date: March 20, 2020

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

Sheldon Cooper Jr., Malone, appellant pro se.

Letitia James, Attorney General, Albany (Sarah L.
Rosenbluth of counsel), for respondents.

Appeal from a judgment of the Supreme Court (Zwack, J.),
entered October 29, 2018 in Albany County, which, in a
proceeding pursuant to CPLR article 78, dismissed the petition.

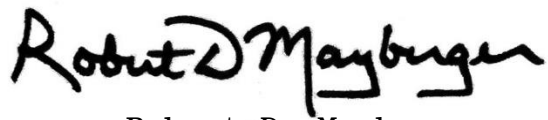
Petitioner commenced this CPLR article 78 proceeding to
challenge a tier III prison disciplinary determination finding
him guilty of violating certain prison disciplinary rules.
Thereafter, respondents answered and raised the defense,
pursuant to CPLR 3211 (a) (5), that the petition was not timely
filed. Supreme Court agreed and dismissed the petition on that
basis. This appeal by petitioner ensued.

The Attorney General now urges this Court to reverse the judgment and to grant respondents leave to file an amended answer to address petitioner's challenges to the at-issue prison disciplinary determination. In support of its request, the Attorney General withdraws its timeliness objection based upon evidence that petitioner did not receive notice of the October 31, 2017 administrative affirmance of the prison disciplinary determination until December 2017, rendering this March 2018 proceeding timely. Upon review of the papers submitted by the Attorney General, we agree that reversal of the judgment is appropriate. Inasmuch as the Attorney General has not provided the "proposed amended or supplemental pleading clearly showing the changes or additions to be made" (CPLR 3025 [b]; see Scialdone v Stepping Stones Assoc., L.P., 148 AD3d 950, 952 [2d Dept 2017], appeal dismissed 29 NY3d 1113 [2017]; Barone v Concert Serv. Specialists, Inc., 127 AD3d 1119, 1120 [2015]; compare Putrelo Constr. Co. v Town of Marcy, 137 AD3d 1591, 1592 [2016]; Medina v City of New York, 134 AD3d 433, 433 [2015]), we remit the matter so that respondents may seek leave to amend and supplement their answer pursuant to CPLR 3025 (b) and Supreme Court may, in the first instance, entertain whether such request should be granted.

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

ORDERED that the judgment is reversed, on the law, without costs, and matter remitted to the Supreme Court for further proceedings not inconsistent with this Court's decision.

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