

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

Decided and Entered: November 27, 2024

CV-23-1470

In the Matter of PAUL DAVILA,
Appellant,

v

ANTHONY RODRIGUEZ, as
Acting Director of Special
Housing and Inmate Disciplinary
Programs,
Respondent.

MEMORANDUM AND ORDER

Calendar Date: November 8, 2024

Before: Garry, P.J., Aarons, Reynolds Fitzgerald, McShan and Powers, JJ.

Paul Davila, Stormville, appellant pro se.

Letitia James, Attorney General, Albany (*Kate H. Nepveu* of counsel), for respondent.

Appeal from a judgment of the Supreme Court (Adam W. Silverman, J.), entered July 19, 2023 in Albany County, which, in a proceeding pursuant to CPLR article 78, granted respondent's motion to dismiss the petition.

Petitioner, an incarcerated individual, commenced this CPLR article 78 proceeding challenging a determination, following a tier III prison disciplinary hearing, finding him guilty of violating certain prison disciplinary rules. Pursuant to an order to show cause signed by Supreme Court (Mackey, J.), petitioner was directed to serve the order to show cause and petition with supporting exhibits and affidavits upon respondent and the Attorney General. Respondent moved to dismiss the petition for failure to acquire

personal jurisdiction. Having received no opposition from petitioner, Supreme Court (Silverman, J.) granted respondent's motion to dismiss the petition. This appeal ensued.

We affirm. "It is well established that failure of an incarcerated individual to comply with the directives set forth in an order to show cause will result in dismissal of the petition for lack of personal jurisdiction, unless the incarcerated individual demonstrates that imprisonment presented obstacles beyond his or her control which prevented compliance" (*Matter of Albritton v New York State Div. of Parole*, 210 AD3d 1164, 1164 [3d Dept 2022] [internal quotation marks, brackets and citations omitted]; accord *Matter of Griffin-Robinson v New York State Dept. of Corr. & Community Supervision*, 226 AD3d 1246, 1247 [3d Dept 2024]; *Matter of Montes v New York State Dept. of Corr. & Community Supervision*, 223 AD3d 1131, 1132 [3d Dept 2024]). Petitioner's affidavit of service reflects only service on respondent and not on the Attorney General, and petitioner concedes in his reply brief that he did not serve any papers on the Attorney General, as directed in the order to show cause.¹ Given that petitioner did not comply with that order's service directives and did not demonstrate that his imprisonment presented obstacles that precluded his compliance, Supreme Court correctly granted respondent's motion to dismiss (*see Matter of Montes v New York State Dept. of Corr. & Community Supervision*, 223 AD3d at 1132). Petitioner's remaining contentions are not properly before us.

Garry, P.J., Aarons, Reynolds Fitzgerald, McShan and Powers, JJ., concur.

¹ Contrary to petitioner's assertion, the show-cause order did not transfer the proceeding to this Court, nor did such transfer occur automatically based on his opening papers or by operation of law (*see CPLR 7804 [g]*).

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 style with a large, stylized 'R' and 'M'.

Robert D. Mayberger
Clerk of the Court