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

Decided and Entered: August 6, 2015 519865

In the Matter of ERIC J. SHIELDS,
Appellant,
v MEMORANDUM AND ORDER

ALBERT PRACK, as Director of Special Housing and Inmate Disciplinary Programs,
Respondent.

Calendar Date: June 8, 2015

Before: Peters, P.J., Garry, Egan Jr. and Lynch, JJ.

Eric J. Shields, Moravia, appellant pro se.

Eric T. Schneiderman, Attorney General, Albany (Peter H. Schiff of counsel), for respondent.

Appeal from a judgment of the Supreme Court (Elliot, J.), entered June 4, 2014 in Albany County, which, in a proceeding pursuant to CPLR article 78, granted respondent's motion to dismiss the petition.

Petitioner commenced this CPLR article 78 challenging two prison disciplinary determinations. Respondent moved to dismiss the petition on the ground that the proceeding was not commenced within the four-month statute of limitations provided in CPLR 217 (1). Supreme Court granted the motion and petitioner now appeals.

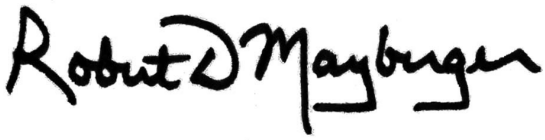
We affirm. Petitioner received notification that the challenged disciplinary determinations had been administratively

affirmed on February 15, 2013 and on March 12, 2013. Given that the instant proceeding was not commenced until November 21, 2013, more than four months thereafter (see CPLR 217 [1]), it was clearly time-barred (see Matter of Jackson v Fischer, 78 AD3d 1335 [2010], lv denied 16 NY3d 705 [2011]; Matter of Smith v Goord, 42 AD3d 839 [2007]). Petitioner's request for reconsideration did not operate to toll the statute of limitations (see Matter of Savinon v Bezio, 79 AD3d 1519 [2010]; Matter of Jenkins v Goord, 288 AD2d 732, 733 [2001], appeal dismissed 97 NY2d 748 [2002]). Therefore, Supreme Court properly dismissed the petition. In view of this disposition, we are foreclosed from addressing the merits of petitioner's claims.

Peters, P.J., Garry, Egan Jr. and Lynch, JJ., concur.

ORDERED that the judgment is affirmed, without costs.

ENTER:



Robert D. Mayberger
Clerk of the Court