

SUPREME COURT OF THE STATE OF NEW YORK
Appellate Division, Fourth Judicial Department

755

CA 13-00007

PRESENT: SMITH, J.P., CENTRA, CARNI, WHALEN, AND DEJOSEPH, JJ.

IN THE MATTER OF MANUEL MOSLEY,
PETITIONER-APPELLANT,

V

MEMORANDUM AND ORDER

MALCOLM R. CULLY, SUPERINTENDENT, COLLINS
CORRECTIONAL FACILITY AND BRIAN FISCHER,
COMMISSIONER, NEW YORK STATE DEPARTMENT OF
CORRECTIONS AND COMMUNITY SUPERVISION,
RESPONDENTS-RESPONDENTS.

MANUEL MOSLEY, PETITIONER-APPELLANT PRO SE.

ERIC T. SCHNEIDERMAN, ATTORNEY GENERAL, ALBANY (MARCUS J. MASTRACCO OF
COUNSEL), FOR RESPONDENTS-RESPONDENTS.

Appeal from a judgment (denominated order) of the Supreme Court,
Erie County (Penny M. Wolfgang, J.), entered November 7, 2012 in a
CPLR article 78 proceeding. The judgment granted the motion of
respondents to dismiss the petition.

It is hereby ORDERED that the judgment so appealed from is
unanimously affirmed without costs.

Memorandum: Petitioner commenced this CPLR article 78 proceeding
seeking to annul the determination, following a tier II disciplinary
hearing, that he violated an inmate rule. Supreme Court properly
granted respondents' motion to dismiss the petition. The record
establishes that the proceeding was untimely inasmuch as it was
commenced more than four months after the final administrative
determination (see CPLR 217 [1]; *Matter of Jackson v Fischer*, 78 AD3d
1335, 1335, lv denied 16 NY3d 705). Petitioner contends that the
proceeding was timely insofar as it challenged the denial of his
grievance related to the inmate rule violation, and that the court
therefore erred in failing to rule on the merits of that challenge.
That contention lacks merit. Even assuming, arguendo, that the
proceeding was timely with respect to the denial of petitioner's
grievance, we conclude that the allegations of the petition "were not
'sufficiently particular to give the court and parties notice' " that
petitioner was also challenging the denial of his grievance, and thus
the court had no reason to consider that purported challenge (*Matter
of Abreu v Hogan*, 72 AD3d 1143, 1143, appeal dismissed 15 NY3d 836,

quoting CPLR 3013).

Entered: June 20, 2014

Frances E. Cafarell
Clerk of the Court