

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

Decided and Entered: June 21, 2012

512950

In the Matter of HENRY
MARCIAL,

Appellant,

v

MEMORANDUM AND ORDER

BRIAN FISCHER, as Commissioner
of Corrections and Community
Supervision,

Respondent.

Calendar Date: May 9, 2012

Before: Peters, P.J., Rose, Lahtinen, Malone Jr. and
McCarthy, JJ.

Henry Marcial, Salem, appellant pro se.

Eric T. Schneiderman, Attorney General, Albany (Frank Brady
of counsel), for respondent.

Appeal from a judgment of the Supreme Court (Melkonian,
J.), entered June 22, 2001 in Albany County, which, in a
proceeding pursuant to CPLR article 78, dismissed the petition.

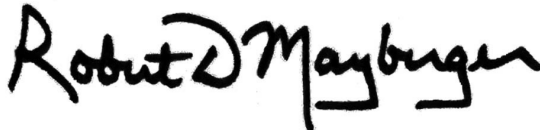
Petitioner commenced this CPLR article 78 proceeding
challenging a determination finding him guilty of violating
certain prison disciplinary rules. After service of respondent's
answer, Supreme Court dismissed the proceeding and this appeal
ensued. The Attorney General has advised this Court that the
disciplinary determination has been administratively reversed and
that all references thereto have been expunged from petitioner's
institutional record. Although petitioner also seeks to be
reassigned to the status he enjoyed prior to the disciplinary

determination, he is not entitled to such relief (see Matter of Hamilton v Bezio, 93 AD3d 1049 [2012]; Matter of Applegate v Fischer, 89 AD3d 1303, 1304 [2011]). He is, however, entitled to restoration of the loss of good time incurred as a result of the disciplinary determination (see Matter of Pereira v Fischer, 87 AD3d 1192 [2011]). The appeal is otherwise moot (see Matter of Hanson v Bezio, 79 AD3d 1569, 1570 [2010]; Matter of Edmonson v Fischer, 79 AD3d 1547, 1548 [2010]).

Peters, P.J., Rose, Lahtinen, Malone Jr. and McCarthy, JJ.,
concur.

ORDERED that the appeal is dismissed, as moot, 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