

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

Decided and Entered: January 26, 2017

522828

In the Matter of LATASIO
CENDALES,
Petitioner,

v

MEMORANDUM AND JUDGMENT

MICHAEL SHEAHAN, as Warden of
Southport Correctional
Facility,
Respondent.

Calendar Date: November 29, 2016

Before: Peters, P.J., McCarthy, Devine, Clark and Mulvey, JJ.

Latasio Cendales, Elmira, petitioner pro se.

Eric T. Schneiderman, Attorney General, Albany (Marcus J. Mastracco of counsel), for respondent.

Proceeding pursuant to CPLR article 78 (transferred to this Court by order of the Supreme Court, entered in Chemung County) to review a determination of the Superintendent of Southport Correctional Facility finding petitioner guilty of violating a prison disciplinary rule.

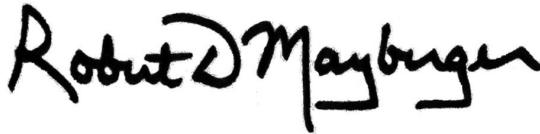
Petitioner commenced this CPLR article 78 proceeding to challenge a tier II determination finding him guilty of violating a prison disciplinary rule. The Attorney General has advised this Court that the determination has since been administratively reversed, all references thereto have been expunged from petitioner's institutional record and the mandatory \$5 surcharge has been refunded to petitioner's inmate account. Given that petitioner has received all of the relief to which he is

entitled, the petition must be dismissed as moot (see Matter of Simmons v Kirkpatrick, 142 AD3d 1245, 1245 [2016]). As the record discloses that petitioner was assessed a \$15 reduced filing fee, he is entitled to a refund of that amount (see Matter of Rodriguez v Prack, 142 AD3d 1235, 1235 [2016]).

Peters, P.J., McCarthy, Devine, Clark and Mulvey, JJ.,
concur.

ADJUDGED that the petition is dismissed, as moot, without costs, but with disbursements in the amount of \$15.

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