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

Decided and Entered: February 2, 2017 522980

In the Matter of JOSEPH A. GELLING,

Petitioner,

v

MEMORANDUM AND JUDGMENT

ANTHONY J. ANNUCCI, as Acting Commissioner of Corrections and Community Supervision, Respondent.

Calendar Date: November 29, 2016

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

Joseph A. Gelling, Dannemora, 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 Clinton County) to review a determination of respondent finding petitioner guilty of violating a prison disciplinary rule.

Petitioner commenced this CPLR article 78 proceeding challenging a tier III 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. In view of this, petitioner has been granted all the relief to which he is entitled and the petition must be dismissed as moot

(<u>see Matter of James v Prack</u>, 137 AD3d 1390, 1391 [2016]).

Peters, P.J., Garry, Egan Jr., Clark and Aarons, JJ., concur.

 $\ensuremath{\mathsf{ADJUDGED}}$ that the petition is dismissed, as moot, without costs.

ENTER:

Robert D. Mayberger Clerk of the Court