

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

Decided and Entered: April 27, 2017

523517

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In the Matter of KEITH WATERS,  
Petitioner,

v

LT. W. PURDY, as Correction  
Officer at Wallkill  
Correctional Facility,  
et al.,  
Respondents.

MEMORANDUM AND JUDGMENT

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Calendar Date: February 28, 2017

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

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Keith Waters, Wallkill, petitioner pro se.

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

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

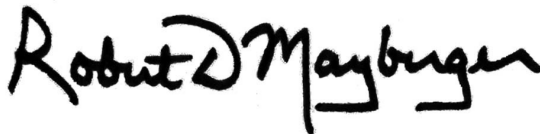
Petitioner commenced this CPLR article 78 proceeding to challenge a tier II prison disciplinary determination. The Attorney General has advised this Court that the determination at issue has been administratively reversed, all references thereto have been expunged from petitioner's institutional record and the mandatory \$5 surcharge has been refunded to petitioner's inmate account. In light of this, and given that petitioner has been afforded all of the relief to which he is entitled, the petition

must be dismissed as moot (see Matter of Kirshtein v New York State Dept. of Corr. & Community Supervision, 142 AD3d 1246, 1246 [2016]; Matter of Boyd v Annucci, 142 AD3d 1214, 1214 [2016]). Furthermore, inasmuch as the record indicates that petitioner was assessed a \$25 reduced filing fee, he is entitled to a refund of that amount (see Matter of Bailey v Annucci, 147 AD3d 1127, 1127 [2017]). To the extent that petitioner contends that a document taken from him must be returned, such contention is not properly before us (see generally Matter of Johnson v Department of Correctional Servs., 53 AD3d 746, 747 [2008]).

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

ADJUDGED that the petition is dismissed, as moot, without costs, but with disbursements in the amount of \$25.

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