

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

Decided and Entered: November 9, 2017

524063

In the Matter of MICHAEL
FARRELL,
Petitioner,

v

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

MEMORANDUM AND JUDGMENT
AND MOTION

Calendar Date: September 19, 2017

Before: McCarthy, J.P., Lynch, Rose, Clark and Rumsey, JJ.

Michael Farrell, Elmira, petitioner pro se.

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

(1) Proceeding pursuant to CPLR article 78 (transferred to this Court by order of the Supreme Court, entered in Albany County) to review a determination of respondent finding petitioner guilty of violating certain prison disciplinary rules, and (2) motion for, among other things, disbursements.

Petitioner commenced this CPLR article 78 proceeding challenging a tier III determination finding him guilty of violating certain prison disciplinary rules. 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.

Turning to his motion, petitioner contends that a loss of good time that incurred as a result of this disciplinary determination should be restored. A review of the record reflects, however, that the penalty imposed did not include a recommended loss of good time. Rather, subsequent to the initial determination in this matter, the Time Allowance Committee held a hearing and determined, based upon petitioner's "poor disciplinary record," that all of his available good time be withheld. Any claim by petitioner challenging the actions of the Committee falls within the prison grievance procedure (see 7 NYCRR 701.2 [a]; see generally Matter of Rodriguez v Director of Special Hous. & Inmate Disciplinary Programs, 71 AD3d 1346, 1348 [2010], lv denied 15 NY3d 702 [2010], cert denied 562 US 940 [2010]). Inasmuch as petitioner has not filed a grievance regarding the actions of the Committee, he has failed to exhaust his administrative remedies and judicial review is precluded (see Matter of Beaubrun v Annucchi, 144 AD3d 1309, 1310 [2016]). Further, contrary to petitioner's contention, respondent complied with 22 NYCRR 800.9 (b). As the record reflects, however, that petitioner paid a reduced filing fee of \$15, we grant his request for reimbursement in that amount. As such, his motion is granted to said extent.

McCarthy, J.P., Lynch, Rose, Clark and Rumsey, JJ., concur.

ADJUDGED that the petition is dismissed, as moot, without costs.

ORDERED that the motion is granted, without costs, to the extent that petitioner is awarded 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