

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

Decided and Entered: September 21, 2017

524286

In the Matter of ROBERT
THOUSAND,
Petitioner,
v

MEMORANDUM AND JUDGMENT

MICHAEL KIRKPATRICK, as
Superintendent of Clinton
Correctional Facility,
Respondent.

Calendar Date: August 7, 2017

Before: Peters, P.J., Garry, Rose, Clark and Rumsey, JJ.

Robert Thousand, 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.

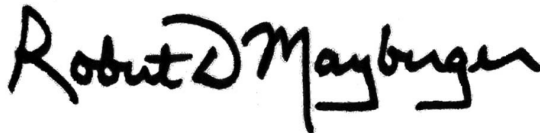
Petitioner commenced this CPLR article 78 proceeding challenging a tier II determination finding him guilty of fighting. The Attorney General has advised this Court that the determination has been administratively reversed, all references thereto have been expunged from petitioner's institutional record and the mandatory \$5 surcharge has been refunded to petitioner's inmate account. Additionally, "petitioner is not entitled to be restored to the status he enjoyed prior to the disciplinary determination" (Matter of West v Annucci, 134 AD3d 1379, 1380

[2015]). Accordingly, as petitioner has received all of the relief to which he is entitled, the petition must be dismissed as moot (see Matter of Micolo v Kirkpatrick, 147 AD3d 1131, 1131 [2017]). As the record reflects that petitioner paid a reduced filing fee of \$15 and he has requested a refund thereof, he is entitled to reimbursement of that sum (see Matter of Cendales v Sheahan, 146 AD3d 1260, 1261 [2017]).

Peters, P.J., Garry, Rose, Clark and Rumsey, 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