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

Decided and Entered: December 14, 2017

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In the Matter of EDGAR ORTEGA, Petitioner, v

MEMORANDUM AND JUDGMENT

WILLIAM LEE, as Superintendent of Eastern N.Y. Correctional Facility, et al., Respondents.

Calendar Date: October 24, 2017

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

Edgar Ortega, Napanoch, petitioner pro se.

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

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 Eastern N.Y. Correctional Facility finding petitioner guilty of violating a prison disciplinary rule.

Petitioner commenced this CPLR article 78 proceeding challenging a tier II disciplinary determination finding him guilty of violating a prison disciplinary rule. 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. "Although petitioner seeks to be restored to the status he enjoyed prior to the disciplinary determination, including

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reinstatement to his prison job and back pay, inmates have no constitutional or statutory right to their prior housing or programming status" (<u>Matter of Chao v Hollingshead</u>, 141 AD3d 1072, 1072 [2016] [internal quotation marks and citations omitted]; <u>see Matter of Folk v Annucci</u>, 122 AD3d 977, 978 [2014]; <u>Matter of Henriquez v Goord</u>, 34 AD3d 962, 962 [2006]). Accordingly, and inasmuch as petitioner has received all of the relief to which he is entitled, the petition must be dismissed as moot (<u>see Matter of Chao v Hollingshead</u>, 141 AD3d at 1072; <u>Matter of Folk v Annucci</u>, 122 AD3d at 978; <u>Matter of Henriquez v Goord</u>, 34 AD3d at 962). As the record reflects that petitioner paid a reduced filing fee of \$15, and he has requested a refund thereof, we grant such request for reimbursement of that amount.

McCarthy, J.P., Lynch, 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:

Robert D. Mayberger Clerk of the Court