

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

Decided and Entered: April 18, 2019

526794

In the Matter of SAMUEL SMALL,
Petitioner,

v

STATE OF NEW YORK,
Respondent.

MEMORANDUM AND JUDGMENT

Calendar Date: March 15, 2019

Before: Garry, P.J., Egan Jr., Aarons, Rumsey and Pritzker, JJ.

Samuel Small, Attica, petitioner pro se.

Letitia James, Attorney General, Albany (Martin A. Hotvet of counsel), for respondent.

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 the Commissioner of Corrections and Community Supervision finding petitioner guilty of violating certain prison disciplinary rules.

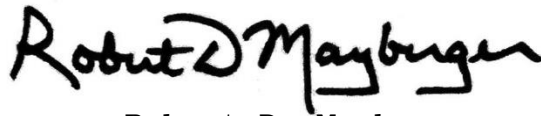
Petitioner commenced this CPLR article 78 proceeding challenging a tier III determination finding him guilty of violating certain prison disciplinary rules. The Attorney General has advised this Court that the determination has been administratively reversed, all references thereto have been expunged from petitioner's institutional record and the mandatory \$5 surcharge has been refunded to petitioner's inmate account. To the extent that petitioner seeks to be restored to the status that he enjoyed prior to the disciplinary

determination, he is not entitled to such relief (see Matter of Boeck v Annucci, 165 AD3d 1334, 1334 [2018]; Matter of Herbert v Venettozzi, 162 AD3d 1454, 1455 [2018]). However, the record establishes that the penalty imposed included a six-month loss of good time, and, although not referenced by the Attorney General's letters, "the loss of . . . good time incurred by petitioner as a result of the determination should be restored" (Matter of Chavez v Annucci, 168 AD3d 1332, 1332 [2019]). As petitioner otherwise has obtained all of the relief to which he is entitled, the petition must be dismissed as moot (see Matter of Ortiz v Venettozzi, 167 AD3d 1200, 1201 [2018]; Matter of Adams v Annucci, 167 AD3d 1125, 1126 [2018]).

Garry, P.J., Egan Jr., Aarons, Rumsey and Pritzker, JJ.,
concur.

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

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