

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

Decided and Entered: January 31, 2019

526846

In the Matter of IVAN CHAVEZ,
Petitioner,

v

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

MEMORANDUM AND JUDGMENT

Calendar Date: January 4, 2019

Before: Garry, P.J., Lynch, Mulvey, Aarons and Pritzker, JJ.

Ivan Chavez, Elmira, petitioner pro se.

Letitia James, 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 Albany County) to review a determination of respondent finding petitioner guilty of violating a prison disciplinary rule.

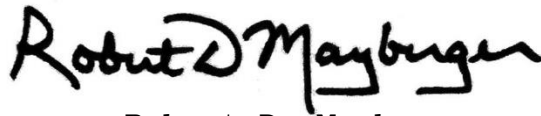
Petitioner commenced this CPLR article 78 proceeding challenging a tier III prison disciplinary determination finding him guilty of violating a prison disciplinary rule. The Attorney General has advised this Court that the determination has been administratively reversed, all references thereto have been expunged from petitioner's institutional record, and the mandatory \$5 surcharge has been refunded to petitioner's inmate account. The record establishes that the penalty imposed

included loss of good time, and, although not referenced in the Attorney General's letter, we note that the loss of five months of good time incurred by petitioner as a result of the determination should be restored (see Matter of Dallas v Annucci, 160 AD3d 1325, 1325 [2018]; Matter of Harrison v Annucci, 159 AD3d 1255, 1256 [2018]). Given that petitioner has received the relief to which he is entitled, the petition must be dismissed as moot (see Matter of Brown v Fischer, 148 AD3d 1383, 1384 [2017]). As the record reflects that petitioner had paid a reduced filing fee of \$50 and he has requested reimbursement thereof, we grant petitioner's request for that amount.

Garry, P.J., Lynch, Mulvey, Aarons and Pritzker, JJ.,
concur.

ADJUDGED that the petition is dismissed, as moot, without costs, but with disbursements in the amount of \$50.

ENTER:

Handwritten signature of Robert D. Mayberger in black ink.

Robert D. Mayberger
Clerk of the Court