

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

Decided and Entered: August 3, 2017

523777

In the Matter of GERARD
JENKINS,
Petitioner,
v

MEMORANDUM AND JUDGMENT

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

Calendar Date: June 12, 2017

Before: Peters, P.J., Egan Jr., Devine, Aarons and Rumsey, JJ.

Gerard Jenkins, Auburn, 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 Albany County) to review a determination of respondent finding petitioner guilty of violating certain prison disciplinary rules.

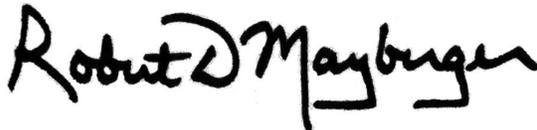
Petitioner commenced this CPLR article 78 proceeding challenging a tier III determination finding him guilty of violating certain prison disciplinary rules. The Attorney General has advised this Court that the determination has been administratively reversed, all references thereto have been expunged from petitioner's institutional record and the mandatory \$5 surcharge has been refunded to petitioner's inmate account. Given that petitioner has received all the relief to which he is entitled, the petition must be dismissed as moot (see Matter of

Tafari v Annucci, 148 AD3d 1438, 1439 [2017]). We note that the loss of good time incurred by petitioner as a result of the disciplinary determination should also be restored (see Matter of Hines v Venettozzi, 148 AD3d 1444, 1445 [2017]). Finally, inasmuch as the record discloses that petitioner was assessed a \$15 reduced filing fee, that amount should be refunded to him (see Matter of Bailey v Annucci, 147 AD3d 1127, 1128 [2017]).

Peters, P.J., Egan Jr., Devine, Aarons 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