

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

Decided and Entered: November 9, 2017

524550

In the Matter of ANTHONY
RUCANO,
Petitioner,

v

MEMORANDUM AND JUDGMENT
AND MOTION

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

Calendar Date: September 19, 2017

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

Anthony Rucano, Attica, petitioner pro se.

Eric T. Schneiderman, Attorney General, Albany (Owen Demuth
of counsel), for respondent.

(1) 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, and
(2) motion for, among other things, disbursements.

Petitioner commenced this CPLR article 78 proceeding
challenging a tier III determination finding him guilty of
violating a prison disciplinary rule. The determination has
since been administratively reversed, all references thereto have
been expunged from petitioner's institutional record and the \$5
mandatory surcharge has been refunded to petitioner's inmate
account. Contrary to petitioner's contentions, he has no right
to be restored to the status he enjoyed prior to the

administrative segregation determination (see Matter of Russ v Annucci, 134 AD3d 1368 [2015]; Matter of Folk v Annucci, 122 AD3d 977, 978 [2014]). However, the loss of good time incurred by petitioner as a result of the disciplinary proceeding should be restored (see Matter of Jenkins v Annucci, 153 AD3d 992, 992 [2017]). Otherwise, petitioner has been granted all of the relief to which he is entitled and, as such, his petition must be dismissed as moot (see Matter of Sheard v Annucci, 153 AD3d 1008, 1008 [2017]; Matter of Gega v Annucci, 149 AD3d 1439, 1439 [2017]). To the extent that petitioner requests declaratory relief, such request was not included in his petition and, in any event, is not authorized by CPLR 7804 (g) (see Matter of Nunez v LaValley, 95 AD3d 1583, 1584 [2012]).

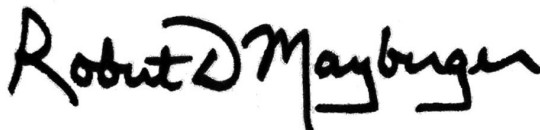
As a final matter, because the record reflects that petitioner paid a reduced filing fee of \$15 and he has requested a refund thereof, we grant that portion of his motion requesting reimbursement of that amount.

Peters, P.J., Egan Jr., Rose, Clark and Rumsey, JJ.,
concur.

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

ORDERED that the motion is granted, without costs, to the extent that petitioner is awarded 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