

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

Decided and Entered: June 28, 2018

525956

In the Matter of MARQUIS
HERBERT,
Petitioner,

v

MEMORANDUM AND JUDGMENT

DONALD VENETTOZZI, as Acting
Director of Special
Housing and Inmate
Disciplinary Programs,
Respondent.

Calendar Date: May 8, 2018

Before: McCarthy, J.P., Devine, Aarons, Rumsey and
Pritzker, JJ.

Marquis Herbert, Stormville, petitioner pro se.

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

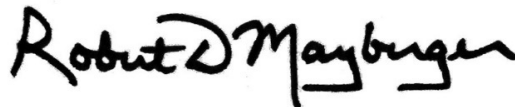
Petitioner commenced this CPLR article 78 proceeding challenging a tier III determination finding him guilty of violating certain prison disciplinary rules. The Attorney General has advised this Court that the determination has been

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. Further, to the extent that he seeks such relief, "petitioner is not entitled to be restored to the status he enjoyed prior to the disciplinary determination" (Matter of Brown v Annucci, 157 AD3d 1182, 1182 [2018] [internal quotation marks and citation omitted]). Accordingly, and inasmuch as petitioner otherwise has received all of the relief to which he is entitled, the petition must be dismissed as moot (see Matter of Colon v Annucci, 159 AD3d 1216, 1216 [2018]; Matter of Kennedy v Annucci, 157 AD3d 1179, 1180 [2017]).

McCarthy, J.P., Devine, 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