

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

Decided and Entered: June 27, 2019

527592

In the Matter of DAVID DACEY,
Petitioner,

v

MEMORANDUM AND JUDGMENT

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

Calendar Date: May 24, 2019

Before: Garry, P.J., Egan Jr., Lynch, Clark and Pritzker, JJ.

David Dacey, Ogdensburg, 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 certain prison disciplinary rules.

Petitioner commenced this CPLR article 78 proceeding challenging a tier III disciplinary 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 \$5 mandatory 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 Ortiz v Venettozzi, 167 AD3d 1200, 1200 [2018]; Matter of Boeck v Annucci, 165 AD3d 1334, 1334 [2018]; Matter of Harrison v Annucci, 159 AD3d 1255, 1255 [2018]). The record establishes, however, 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 one month of good time incurred by petitioner as a result of the determination should be restored (see Matter of Dudley v Annucci, 168 AD3d 1333, 1333-1334 [2019]; Matter of Chavez v Annucci, 168 AD3d 1332, 1333 [2019]; Matter of Duchnowski v Annucci, 168 AD3d 1301, 1301 [2019]). Given that petitioner has received all the relief to which he is entitled, the petition must be dismissed as moot (see Matter of Williams v Keyser, 167 AD3d 1202, 1202 [2018]; Matter of Houghtaling v Venettozzi, 160 AD3d 1309, 1309 [2018]).

Garry, P.J., Egan Jr., Lynch, Clark and Pritzker, JJ.,
concur.

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

ENTER:



Robert D. Mayberger
Clerk of the Court