

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

Decided and Entered: December 12, 2019

529094

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In the Matter of ROBERT  
CUMBERLAND,  
Petitioner,

v

MEMORANDUM AND JUDGMENT

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

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Calendar Date: November 8, 2019

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

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Robert Cumberland, Comstock, petitioner pro se.

Letitia James, Attorney General, Albany (Marcus J. Mastracco of counsel), for respondent.

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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 a prison disciplinary rule.

Petitioner commenced this CPLR article 78 proceeding challenging a prison disciplinary determination rendered following a rehearing. The Attorney General has advised this Court that the determination at issue 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. The record reflects that the penalty imposed included three months loss of good time, and this amount should also be restored to petitioner (see Matter of Small v State of New York, 171 AD3d 1380, 1381 [2019]; Matter of Chavez v Annucci, 168 AD3d 1332, 1333 [2019]). As petitioner has otherwise received all of the relief to which he is entitled, the petition must be dismissed as moot (see Matter of Telesford v Annucci, 175 AD3d 1717, 1717 [2019]; Matter of Jackson v Annucci, 171 AD3d 1381, 1381 [2019]). Furthermore, given that the record discloses that petitioner paid a reduced filing fee of \$15 in connection with this proceeding, we grant his request for reimbursement of such amount (see Matter of Jackson v Henley, 175 AD3d 1686, 1687 [2019]; Matter of Williams v Keyser, 167 AD3d 1202, 1202 [2018]).

Egan Jr., J.P., Devine, Aarons and Pritzker, 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