

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

Decided and Entered: March 11, 2021

531908

In the Matter of WILLIE CLARK,
Petitioner,

v

MEMORANDUM AND JUDGMENT

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

Calendar Date: February 4, 2021

Before: Lynch, J.P., Aarons, Pritzker, Reynolds Fitzgerald and
Colangelo, JJ.

Willie Clark, Alden, petitioner pro se.

Letitia James, Attorney General, Albany (Kate H. Nepveu 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 a prison disciplinary rule.

Petitioner commenced this CPLR article 78 proceeding
challenging a tier III disciplinary determination that found him
guilty of violating a prison disciplinary rule. The Attorney
General has advised this Court that the determination has been
administratively reversed and all references thereto have been
expunged from petitioner's institutional record. Given that
petitioner has received all the relief to which he is entitled,

the petition must be dismissed as moot (see Matter of Louime v Venettozzi, 186 AD3d 1870, 1871 [2020]; Matter of Kennedy v Annucci, 185 AD3d 1372, 1373 [2020]). Inasmuch as the record does not reflect that the mandatory \$5 surcharge was refunded to petitioner's account (see 7 NYCRR 253.7 [b]), he should be permitted to recoup that expense (see Matter of Dibble v Venettozzi, 181 AD3d 1139, 1139 [2020]). As the record does reflect that petitioner has paid a filing fee of \$305, and he has requested reimbursement thereof, we grant petitioner's request for that amount.

Lynch, J.P., Aarons, Pritzker, Reynolds Fitzgerald and Colangelo, JJ., concur.

ADJUDGED that the petition is dismissed, as moot, without costs, but with disbursements in the amount of \$305.

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