

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

Decided and Entered: June 27, 2024

CV-23-1938

In the Matter of JONATHAN
NIPITELLA,
Petitioner,

v

MEMORANDUM AND JUDGMENT

ANTHONY J. ANNUCCI, as Acting
Commissioner of Corrections
and Community Supervision,
et al.,
Respondents.

Calendar Date: May 24, 2024

Before: Egan Jr., J.P., Clark, Lynch, Reynolds Fitzgerald and Fisher, JJ.

Jonathan Nipitella, Moravia, 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 Superintendent of Fishkill Correctional Facility finding petitioner guilty of violating a prison disciplinary rule.

Petitioner commenced this CPLR article 78 proceeding challenging a tier II disciplinary determination finding him guilty of violating a prison disciplinary rule. 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 account. Given that petitioner has received all of the relief to which he is entitled, the petition must be dismissed as moot (*see Matter of Perkins v Annucci*, 216 AD3d 1388, 1388 [3d Dept 2023]; *Matter of Jeffries v New York State Dept. of Corr. & Community Supervision*, 211 AD3d 1207, 1208 [3d Dept 2022]). As the record reflects that petitioner paid a reduced filing fee of \$15 and has paid and documented other expenses in connection with this proceeding in the amount of \$49.49, and he has requested reimbursement thereof, we grant that portion of his application and direct respondents to reimburse him that amount.

Egan Jr., J.P., Clark, Lynch, Reynolds Fitzgerald and Fisher, JJ., concur.

ADJUDGED that the petition is dismissed, as moot, without costs, but with disbursements in the amount of \$64.49.

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