

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

Decided and Entered: April 17, 2025

CV-24-1833

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In the Matter of ROBERTO  
CONCEPCION,  
Petitioner,  
v

MEMORANDUM AND JUDGMENT

DANIEL F. MARTUSCELLO III, as  
Commissioner of Corrections  
and Community Supervision,  
Respondent.

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Calendar Date: March 21, 2025

Before: Aarons, J.P., Pritzker, Ceresia, McShan and Powers, JJ.

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*Roberto Concepcion*, Albion, petitioner pro se.

*Letitia James*, Attorney General, Albany (*Kate H. Nepveu* 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 Superintendent of Orleans Correctional Facility finding petitioner guilty of violating a prison disciplinary rule.

Petitioner commenced this CPLR article 78 proceeding to challenge a tier II determination finding him guilty of violating a prison disciplinary rule. The Attorney General has advised this Court that the determination has since 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 account. In view of this,

and given that petitioner has been granted all the relief to which he is entitled, the petition must be dismissed as moot (*see Matter of Concepcion v Annucci*, 231 AD3d 1455, 1455 [3d Dept 2024]). As the record reflects that petitioner paid a reduced filing fee of \$15, and he has requested reimbursement thereof, we grant that request and direct respondent to reimburse him that amount.

Aarons, J.P., Pritzker, Ceresia, McShan and Powers, 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