

**APPELLATE DIVISION OF THE SUPREME COURT OF THE STATE OF NEW YORK, THIRD DEPARTMENT**

**Matter of Harris v. Collado**

2021 NY Slip Op 03102 (N.Y. Ct. App. 2021) · No. 532174 · Decided May 13, 2021

**SUMMARY**

The Appellate Division, Third Department dismissed as moot a CPLR article 78 proceeding challenging a prison disciplinary determination because the determination had been administratively reversed, expunged, and the mandatory surcharge refunded. The court granted the petitioner reimbursement of \$21.40 in filing-related expenses and disbursements.

**CASE DETAILS**

|                       |                                                                                                                                                                                            |
|-----------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| COURT                 | Appellate Division of the Supreme Court of the State of New York, Third Department                                                                                                         |
| WRITING FOR THE COURT | Garry, P.J.; Clark, J.; Aarons, J.; Pritzker, J.; Reynolds Fitzgerald, J.                                                                                                                  |
| JURISDICTION          | New York                                                                                                                                                                                   |
| DECIDED               | May 13, 2021                                                                                                                                                                               |
| DOCKET                | 532174                                                                                                                                                                                     |
| DISPOSITION           | dismissed                                                                                                                                                                                  |
| PROCEDURAL POSTURE    | CPLR article 78 proceeding challenging a tier II prison disciplinary determination; the proceeding was transferred to the Appellate Division by order of the Supreme Court, Ulster County. |
| PRECEDENTIAL VALUE    | Published opinion of the New York Appellate Division, Third Department                                                                                                                     |
| PARTIES               | Andre Harris, Petitioner v. Jaifa Collado, as Superintendent of Shawangunk Correctional Facility, Respondent                                                                               |

**TOPICS**

mootness   judicial review of agency action   appellate procedure   remedies   costs

**PRACTICE AREAS**

administrative law   prison disciplinary proceedings   civil procedure   appellate procedure

## QUESTIONS PRESENTED

1. Whether the article 78 proceeding became moot after the challenged disciplinary determination was administratively reversed, expunged from Harris's institutional record, and the mandatory surcharge was refunded.
2. Whether Harris was entitled to reimbursement of his \$15 reduced filing fee and \$6.40 in other proceeding-related expenses.

## HOLDINGS

1. The petition must be dismissed as moot because Harris received all relief to which he was entitled: administrative reversal of the determination, expungement of references from his institutional record, and refund of the mandatory surcharge.
2. Harris was entitled to disbursements of \$21.40, consisting of the reduced filing fee and other expenses associated with the proceeding.

## KEY QUOTATIONS

*“In view of this, and given that petitioner has received all of the relief to which he is entitled, the petition must be dismissed as moot”* ([\*1])

## FACTUAL BACKGROUND

Harris challenged a tier II prison disciplinary determination that found him guilty of violating certain prison disciplinary rules. The determination was administratively reversed, all references to it were removed from his institutional record, and the \$5 mandatory surcharge was refunded. Harris had paid \$6.40 in other proceeding-related expenses and sought reimbursement.

## PROCEDURAL HISTORY

Harris commenced an article 78 proceeding challenging a determination finding him guilty of violating prison disciplinary rules. While the proceeding was pending, the determination was administratively reversed, references were expunged from his institutional record, and a mandatory surcharge was refunded. The Appellate Division dismissed the petition as moot but awarded Harris \$21.40 in disbursements.

## DISPOSITION

dismissed

## CASES CITED

- Matter of Upson v. Rich, 190 A.D.3d 1182, 1182 (3d Dep't 2021)
- Matter of Dibble v. Venettozzi, 181 A.D.3d 1139, 1139 (3d Dep't 2020)

## OPINION

PER CURIAM.

Matter of Harris v Collado (2021 NY Slip Op 03102) Matter of Harris v Collado 2021 NY Slip Op 03102 Decided on May 13, 2021 Appellate Division, Third Department Published by New York State Law Reporting Bureau pursuant to Judiciary Law § 431. This opinion is uncorrected and subject to revision before publication in the Official Reports. Decided and Entered: May 13, 2021 532174 [\*1] In the Matter of Andre Harris, Petitioner, v Jaifa Collado, as Superintendent of Shawangunk Correctional Facility, Respondent.

Calendar Date: April 16, 2021 Before: Garry, P.J., Clark, Aarons, Pritzker and Reynolds Fitzgerald, JJ. Andre Harris, Wallkill, 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 Ulster County) to review a determination of respondent finding petitioner guilty of violating certain prison disciplinary rules.

Petitioner commenced this CPLR article 78 proceeding to challenge a tier II 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.

In view of this, and given that petitioner has received all of the relief to which he is entitled, the petition must be dismissed as moot (see *Matter of Upson v Rich* 190 AD3d 1182, 1182 [2021]; *Matter of Dibble v Venettozzi*, 181 AD3d 1139, 1139 [2020]).

As the record reflects that petitioner was ordered to pay a reduced filing fee of \$15 and has paid \$6.40 in other expenses associated with this proceeding, and he has requested reimbursement thereof, we grant petitioner's request for that amount. Garry, P.J., Clark, Aarons, Pritzker and Reynolds Fitzgerald, JJ., concur. ADJUDGED that the petition is dismissed, as moot, without costs, but with disbursements in the amount of \$21.40.