

SUPREME COURT OF THE STATE OF NEW YORK
Appellate Division, Fourth Judicial Department

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KAH 19-01485

PRESENT: WHALEN, P.J., CENTRA, PERADOTTO, LINDLEY, AND BANNISTER, JJ.

THE PEOPLE OF THE STATE OF NEW YORK EX REL.
TIMOTHY D. BUSH, PETITIONER-APPELLANT,

V

MEMORANDUM AND ORDER

A. AWOPETU, SUPERINTENDENT, LIVINGSTON
CORRECTIONAL FACILITY, RESPONDENT-RESPONDENT.

HAYDEN DADD, CONFLICT DEFENDER, GENESEO (BRADLEY E. KEEM OF COUNSEL),
FOR PETITIONER-APPELLANT.

LETITIA JAMES, ATTORNEY GENERAL, ALBANY (BEEZLY J. KIERNAN OF
COUNSEL), FOR RESPONDENT-RESPONDENT.

Appeal from a judgment of the Supreme Court, Livingston County
(Robert B. Wiggins, A.J.), dated May 3, 2019 in a habeas corpus
proceeding. The judgment denied the petition.

It is hereby ORDERED that said appeal is unanimously dismissed
without costs.

Memorandum: Petitioner appeals from a judgment denying his
petition for a writ of habeas corpus. Because petitioner concedes
that he has been released to parole supervision, the appeal has been
rendered moot (*see People ex rel. Sabino v New York State Dept. of
Corr. & Community Supervision*, 178 AD3d 1446, 1447 [4th Dept 2019];
People ex rel. Luck v Squires, 173 AD3d 1767, 1767 [4th Dept 2019]).
We conclude that the exception to the mootness doctrine does not apply
(*see People ex rel. Winters v Crowley*, 166 AD3d 1525, 1525 [4th Dept
2018], *lv denied* 32 NY3d 917 [2019]; *see generally Matter of Hearst
Corp. v Clyne*, 50 NY2d 707, 714-715 [1980]). While this Court has the
power to convert the habeas corpus proceeding into a CPLR article 78
proceeding, we decline to do so under the circumstances of this case
(*see People ex rel. Stokes v New York State Div. of Parole*, 144 AD3d
1550, 1551 [4th Dept 2016], *lv denied* 28 NY3d 915 [2017]).

Entered: October 2, 2020

Mark W. Bennett
Clerk of the Court