

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

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CA 13-00403

PRESENT: FAHEY, J.P., PERADOTTO, LINDLEY, SCONIERS, AND DEJOSEPH, JJ.

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IN THE MATTER OF GERALD BROCKINGTON,  
PETITIONER-APPELLANT,

V

MEMORANDUM AND ORDER

BRIAN FISCHER, COMMISSIONER, NEW YORK STATE  
DEPARTMENT OF CORRECTIONS AND COMMUNITY  
SUPERVISION, RESPONDENT-RESPONDENT.

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WYOMING COUNTY-ATTICA LEGAL AID BUREAU, WARSAW (ADAM W. KOCH OF  
COUNSEL), FOR PETITIONER-APPELLANT.

ERIC T. SCHNEIDERMAN, ATTORNEY GENERAL, ALBANY (ZAINAB A. CHAUDHRY OF  
COUNSEL), FOR RESPONDENT-RESPONDENT.

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Appeal from a judgment of the Supreme Court, Wyoming County (Mark H. Dadd, A.J.), entered January 23, 2013 in a CPLR article 78 proceeding. The judgment denied the petition.

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

Memorandum: Petitioner commenced this CPLR article 78 proceeding challenging the denial of his application for release to parole supervision in June 2011. The Attorney General has advised this Court that, subsequent to that denial and during the pendency of this appeal, petitioner reappeared before the Board of Parole in June 2013 and was again denied release. Consequently, this appeal must be dismissed as moot (*see Matter of Sanchez v Evans*, 111 AD3d 1315, 1315; *Matter of Robles v Evans*, 100 AD3d 1455, 1455). Contrary to petitioner's contention, the exception to the mootness doctrine does not apply (*see Sanchez*, 111 AD3d at 1315; *see generally Matter of Hearst Corp. v Clyne*, 50 NY2d 707, 714-715).

Entered: July 3, 2014

Frances E. Cafarell  
Clerk of the Court