

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

811

KAH 14-00170

PRESENT: SCUDDER, P.J., SMITH, PERADOTTO, SCONIERS, AND WHALEN, JJ.

THE PEOPLE OF THE STATE OF NEW YORK EX REL.
JUSTICE GREEN, PETITIONER-APPELLANT,

V

MEMORANDUM AND ORDER

BRANDON SMITH, SUPERINTENDENT, MID-STATE
CORRECTIONAL FACILITY AND BRIAN FISCHER,
COMMISSIONER, NEW YORK STATE DEPARTMENT OF
CORRECTIONS AND COMMUNITY SUPERVISION,
RESPONDENTS-RESPONDENTS.

GETNICK LIVINGSTON ATKINSON & PRIORE, LLP, UTICA (PATRICK G. RADEL OF
COUNSEL), FOR PETITIONER-APPELLANT.

ERIC T. SCHNEIDERMAN, ATTORNEY GENERAL, ALBANY (PAUL GROENWEGEN OF
COUNSEL), FOR RESPONDENTS-RESPONDENTS.

Appeal from a judgment (denominated order and judgment) of the
Supreme Court, Oneida County (Erin P. Gall, J.), entered April 9, 2013
in a habeas corpus proceeding. The judgment denied the petition.

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

Memorandum: Petitioner's appeal from the judgment dismissing his
petition for a writ of habeas corpus has been rendered moot by his
release to parole supervision (*see People ex rel. Baron v New York
State Dept. of Corrections*, 94 AD3d 1410, 1410, lv denied 19 NY3d 807;
People ex rel. Graham v Fischer, 70 AD3d 1381, 1381-1382), and the
exception to the mootness doctrine does not apply herein (*see Baron*,
94 AD3d at 1410; *Graham*, 70 AD3d at 1381-1382; *see generally Matter of
Hearst Corp. v Clyne*, 50 NY2d 707, 714-715). 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. Keyes v Khahaifa*, 101 AD3d 1665, 1665, lv denied
20 NY3d 862).

Entered: July 11, 2014

Frances E. Cafarell
Clerk of the Court