

Supreme Court of the State of New York
Appellate Division: Second Judicial Department

D55656
L/htr

_____AD3d_____

Argued - January 19, 2018

WILLIAM F. MASTRO, J.P.
JOHN M. LEVENTHAL
SANDRA L. SGROI
JOSEPH J. MALTESE, JJ.

2016-12019

DECISION & ORDER

In the Matter of Cesar Molina, appellant, v Anthony
J. Annucci, etc., et al., respondents.

(Index No. 302/16)

Seymour W. James, Jr., New York, NY (Robert C. Newman of counsel), for
appellant.

Barbara D. Underwood, Attorney General, New York, NY (Anisha S. Dasgupta and
Ester Murdukhayeva of counsel), for respondents.

In a proceeding pursuant to CPLR article 78, inter alia, to review a determination
relating to a proceeding to revoke the petitioner's release to postrelease supervision, the petitioner
appeals from a judgment of the Supreme Court, Dutchess County (Peter M. Forman, J.), dated
September 30, 2016. The judgment denied the petition and dismissed the proceeding.

ORDERED that the appeal is dismissed, without costs or disbursements.

The petitioner was convicted of criminal sexual act in the second degree, and
sentenced to a term of imprisonment and a period of postrelease supervision (hereinafter PRS).
Upon the petitioner's designation for release to PRS, he was placed at a residential treatment facility
in Fishkill (hereinafter Fishkill RTF) as a condition of PRS. The petitioner was subsequently
charged with violating a condition of PRS while at Fishkill RTF. After a preliminary hearing, it was
determined that probable cause existed to support the alleged violation. Eventually, after a final
revocation hearing, the petitioner's release was revoked and a time assessment imposed.

The petitioner commenced this proceeding pursuant to CPLR article 78, asserting that
the respondents lacked jurisdiction to revoke his release. The Supreme Court denied the petition and

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dismissed the proceeding. The petitioner appeals.

Since it is undisputed that subsequent to the denial of his petition, the petitioner completed his time assessment and was released to PRS, with no effect on the maximum expiration date of his sentence of imprisonment or PRS term, this appeal has been rendered academic (*see Matter of Smith v New York State Bd. of Parole*, 121 AD3d 1466, 1467). Further, this case does not warrant application of the exception to the mootness doctrine (*see generally Matter of Hearst Corp. v Clyne*, 50 NY2d 707, 714-715). The issues raised in the petition are not evading judicial review, but are in fact being litigated in other cases (*see e.g. Matter of Bennett v Annucci*, ___ AD3d ___ [decided herewith]; *Matter of Metellus v Annucci*, ___ AD3d ___ [decided herewith]).

Accordingly, we dismiss the appeal as academic.

MASTRO, J.P., LEVENTHAL, SGROI and MALTESE, JJ., concur.

ENTER:



Aprilanne Agostino
Clerk of the Court