

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

377

CA 22-00734

PRESENT: SMITH, J.P., LINDLEY, BANNISTER, MONTOUR, AND GREENWOOD, JJ.

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IN THE MATTER OF KEVIN STUART,  
PETITIONER-APPELLANT,

V

MEMORANDUM AND ORDER

ANTHONY ANNUCCI, ACTING COMMISSIONER, NEW YORK  
STATE DEPARTMENT OF CORRECTIONS AND COMMUNITY  
SUPERVISION, RESPONDENT-RESPONDENT.

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WYOMING COUNTY-ATTICA LEGAL AID BUREAU, WARSAW (MICHAEL J. MANUSIA OF  
COUNSEL), FOR PETITIONER-APPELLANT.

LETITIA JAMES, ATTORNEY GENERAL, ALBANY (DUSTIN J. BROCKNER OF  
COUNSEL), FOR RESPONDENT-RESPONDENT.

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Appeal from a judgment of the Supreme Court, Wyoming County  
(Michael M. Mohun, A.J.), entered April 18, 2022 in a proceeding  
pursuant to CPLR article 78. The judgment dismissed the petition.

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

Memorandum: Petitioner appeals from a judgment dismissing his  
CPLR article 78 petition seeking to annul the determination of the  
Board of Parole (Board) denying his request for release to parole  
supervision following a hearing in April 2021. The Attorney General  
has advised this Court that, subsequent to that denial and during the  
pendency of this appeal, petitioner reappeared before the Board in  
April 2023 and was again denied release. Consequently, this appeal  
must be dismissed as moot (*see Matter of Romano v Annucci*, 196 AD3d  
1176, 1176 [4th Dept 2021]; *Matter of Colon v Annucci*, 177 AD3d 1393,  
1394 [4th Dept 2019]; *see generally Matter of Moissett v Travis*, 97  
NY2d 673, 674 [2001]). Contrary to petitioner's contention, we  
conclude that this case does not fall within the exception to the  
mootness doctrine (*see Romano*, 196 AD3d at 1176; *Colon*, 177 AD3d at  
1394; *Matter of Brunner v Speckard*, 214 AD2d 1040, 1040-1041 [4th Dept  
1995], *lv denied* 86 NY2d 707 [1995]; *see generally Matter of Hearst  
Corp. v Clyne*, 50 NY2d 707, 714-715 [1980]).

Entered: June 9, 2023

Ann Dillon Flynn  
Clerk of the Court