

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

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CA 25-00443

PRESENT: WHALEN, P.J., LINDLEY, OGDEN, GREENWOOD, AND HANNAH, JJ.

IN THE MATTER OF NEW YORK STATE POLICE,
PETITIONER-APPELLANT,

V

MEMORANDUM AND ORDER

DAVID J. KINGSLEY, II, RESPONDENT-RESPONDENT.

LETITIA JAMES, ATTORNEY GENERAL, ALBANY (SARAH COCO OF COUNSEL), FOR
PETITIONER-APPELLANT.

FRESHFIELDS US LLP, WASHINGTON, DC (JENNIFER B. LOEB OF COUNSEL), FOR
BRADY CENTER TO PREVENT GUN VIOLENCE AND GIFFORDS LAW CENTER TO
PREVENT GUN VIOLENCE, AMICI CURIAE.

Appeal from an order of the Supreme Court, Jefferson County
(William F. Ramseier, J.), entered February 6, 2025. The order denied
petitioner's application for a final extreme risk protection order.

It is hereby ORDERED that said appeal is unanimously dismissed
without costs and the order is vacated.

Memorandum: In this proceeding pursuant to the Extreme Risk
Protection Act (see CPLR article 63-A), petitioner appeals from an
order denying its application for a final extreme risk protection
order (ERPO) against respondent, a former correction officer who
participated in the fatal beating of an incarcerated individual at
Marcy Correctional Facility. According to petitioner, Supreme Court
erred in determining that petitioner failed to prove by clear and
convincing evidence that respondent was "likely to engage in conduct
that would result in serious harm to [respondent] or others, as
defined in [Mental Hygiene Law § 9.39 (a) (1) or (2)]" (CPLR 6343
[2]), a prerequisite for the granting of an ERPO. If granted, the
ERPO would have required respondent to surrender all firearms, rifles,
and shotguns in his possession for a maximum of one year (see CPLR
6343 [3] [b], [c]).

While this appeal was pending, respondent was convicted of murder
in the second degree and another felony for the fatal beating of the
incarcerated individual. Respondent was later sentenced to an
aggregate term of 25 years to life in prison. As a convicted felon,
respondent is prohibited from possessing any firearms, rifles, and
shotguns regardless of whether we reverse or affirm the order from
which petitioner appeals (see Penal Law § 400.00 [1] [c]). Under the
circumstances, we conclude that this appeal is moot and no exception

to the mootness doctrine applies (see generally *Matter of Hearst Corp. v Clyne*, 50 NY2d 707, 714-715 [1980]).

Finally, to prevent the unreviewable order " 'from spawning any legal consequences or precedent,' " we vacate the order (*Matter of Thrall v CNY Centro, Inc.*, 89 AD3d 1449, 1451 [4th Dept 2011], lv dismissed 19 NY3d 898 [2012], quoting *Hearst Corp.*, 50 NY2d at 718; see *Matter of Hensley v Williamsville Cent. Sch. Dist.*, 206 AD3d 1655, 1657 [4th Dept 2022]).