

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

380.1

KAH 20-00666

PRESENT: CENTRA, J.P., PERADOTTO, TROUTMAN, WINSLOW, AND BANNISTER, JJ.

THE PEOPLE OF THE STATE OF NEW YORK EX REL.
TRACI DECARR, PETITIONER-APPELLANT,

V

MEMORANDUM AND ORDER

JULIE WOLCOTT, SUPERINTENDENT, ORLEANS
CORRECTIONAL FACILITY, ET AL.,
RESPONDENTS-RESPONDENTS.

KAREN MURTAGH, EXECUTIVE DIRECTOR, PRISONERS' LEGAL SERVICES OF NEW
YORK, BUFFALO (DAVID W. BENTIVEGNA OF COUNSEL), FOR
PETITIONER-APPELLANT.

LETITIA JAMES, ATTORNEY GENERAL, ALBANY (BRIAN D. GINSBERG OF COUNSEL),
FOR RESPONDENTS-RESPONDENTS.

Appeal from a judgment of the Supreme Court, Orleans County
(Michael M. Mohun, A.J.), entered April 3, 2020 in a habeas corpus
proceeding. The judgment dismissed the petition.

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

Memorandum: Petitioner commenced this proceeding pursuant to CPLR
article 70 seeking a writ of habeas corpus on, inter alia, the ground
that the Department of Corrections and Community Supervision lacked
authority to place him in a Residential Treatment Facility (RTF) during
his period of postrelease supervision based on his failure to locate a
residence that complied with the requirements of the Sexual Assault
Reform Act (see Executive Law § 259-c [14]). While this appeal was
pending, however, petitioner was released from the RTF thereby
rendering this appeal moot (see *People ex rel. Johnson v
Superintendent, Adirondack Corr. Facility*, 36 NY3d 187, 195-196 [2020],
rearg dismissed 36 NY3d 1087 [2021]; *People ex rel. McCurdy v Warden,
Westchester County Corr. Facility*, 36 NY3d 251, 256 n 1 [2020]; see
also *Matter of Gonzalez v Annucci*, 32 NY3d 461, 470-471 [2018]).
Courts invoke the exception to the mootness doctrine "to consider
substantial and novel issues that are likely to be repeated and will
typically evade review" (*Gonzalez*, 32 NY3d at 470). In light of the
recent Court of Appeals decisions in *Johnson* and *McCurdy* that
petitioner concedes "settled many of the arguments" raised in his
petition, we conclude that this appeal does not raise any substantial
or novel issue, and the exception to the mootness doctrine does not
apply (see generally *Matter of Hearst Corp. v Clyne*, 50 NY2d 707, 714-

715 [1980]).

Entered: August 26, 2021

Mark W. Bennett
Clerk of the Court