

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

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CA 24-01017

PRESENT: WHALEN, P.J., CURRAN, SMITH, NOWAK, AND DELCONTE, JJ.

IN THE MATTER OF KEVIN STUART, PETITIONER-APPELLANT,

V

MEMORANDUM AND ORDER

DANIEL F. MARTUSCELLO, III, ACTING COMMISSIONER,
NEW YORK STATE DEPARTMENT OF CORRECTIONS AND
COMMUNITY SUPERVISION, RESPONDENT-RESPONDENT.

WYOMING COUNTY-ATTICA LEGAL AID BUREAU, WARSAW (LEAH R. NOWOTARSKI OF
COUNSEL), FOR PETITIONER-APPELLANT.

LETITIA JAMES, ATTORNEY GENERAL, ALBANY (SARAH L. ROSENBLUTH OF
COUNSEL), FOR RESPONDENT-RESPONDENT.

Appeal from a judgment (denominated order) of the Supreme Court, Wyoming County (Melissa Lightcap Cianfrini, A.J.), entered June 21, 2024, 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 2023. 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 2025 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]). 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 6, 2025

Ann Dillon Flynn
Clerk of the Court