

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

439

KAH 16-01343

PRESENT: WHALEN, P.J., CENTRA, LINDLEY, CURRAN, AND TROUTMAN, JJ.

THE PEOPLE OF THE STATE OF NEW YORK EX REL.
DARRYL GRATE, PETITIONER-APPELLANT,

V

MEMORANDUM AND ORDER

MICHELLE ARTUS, SUPERINTENDENT, LIVINGSTON
CORRECTIONAL FACILITY, AND TINA MARIE STANFORD,
CHAIR, NEW YORK STATE BOARD OF PAROLE,
RESPONDENTS-RESPONDENTS.

CHARLES J. GREENBERG, AMHERST, FOR PETITIONER-APPELLANT.

ERIC T. SCHNEIDERMAN, ATTORNEY GENERAL, ALBANY (KATE H. NEPVEU OF
COUNSEL), FOR RESPONDENTS-RESPONDENTS.

Appeal from a judgment of the Supreme Court, Livingston County (Robert B. Wiggins, A.J.), entered September 29, 2015 in a habeas corpus proceeding. The judgment dismissed the petition.

It is hereby ORDERED that the judgment so appealed from is unanimously affirmed without costs.

Memorandum: Petitioner commenced this proceeding seeking a writ of habeas corpus, contending that he is entitled to immediate release from custody because respondents breached an implied agreement guaranteeing his release to parole if he participated in mandated programs while incarcerated. Supreme Court properly dismissed the petition. As in *People ex rel. Germenis v Cunningham* (73 AD3d 1297 [3d Dept 2010]), petitioner premises his contention on a document entitled "Program Refusal Notice," also known as form 3617. That document notified prisoners that, inter alia, a "refusal to participate in recommended programming may result in the denial of [p]arole." Like the petitioner in *Germenis*, petitioner herein contends that the quoted language "amounted to a contractual obligation to release him on parole in the event that he participated in recommended programming" (*id.* at 1298). We agree with the Third Department that "[t]he document in question discloses no basis upon which to conclude that it created a contractual obligation" and, as a result, we conclude that the court properly dismissed the petition (*id.*; see *People ex rel. MacKenzie v Cunningham*, 78 AD3d 1434, 1434 [3d Dept 2010]; *People ex rel. St. Pierre v Cunningham*, 73 AD3d 1310,

1310-1311 [3d Dept 2010]).

Entered: April 27, 2018

Mark W. Bennett
Clerk of the Court