

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

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KAH 20-01267

PRESENT: SMITH, J.P., PERADOTTO, CARNI, NEMOYER, AND WINSLOW, JJ.

THE PEOPLE OF THE STATE OF NEW YORK EX REL.
CLIFTON PHILLIPS, JR., PETITIONER-APPELLANT,

V

MEMORANDUM AND ORDER

NEW YORK STATE DEPARTMENT OF CORRECTIONS AND
COMMUNITY SUPERVISION, RESPONDENT-RESPONDENT.

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

LETITIA JAMES, ATTORNEY GENERAL, ALBANY (FRANK BRADY OF COUNSEL), FOR
RESPONDENT-RESPONDENT.

Appeal from a judgment of the Supreme Court, Wyoming County
(Michael M. Mohun, A.J.), entered January 13, 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 appeals from a judgment dismissing his
petition for a writ of habeas corpus. The appeal has been rendered
moot by petitioner's release from custody (see *People ex rel.*
Dickerson v Unger, 62 AD3d 1262, 1263 [4th Dept 2009], *lv denied* 12
NY3d 716 [2009]), and the exception to the mootness doctrine does not
apply in this case (see *People ex rel. Stokes v New York State Div. of*
Parole, 144 AD3d 1550, 1551 [4th Dept 2016], *lv denied* 28 NY3d 915
[2017]; *People ex rel. Smith v Cully*, 112 AD3d 1316, 1317 [4th Dept
2013], *lv denied* 22 NY3d 864 [2014]). Although this Court has the
power to convert the habeas corpus proceeding into a CPLR article 78
proceeding, we decline to do so under the circumstances here (see
Stokes, 144 AD3d at 1551).

Entered: July 9, 2021

Mark W. Bennett
Clerk of the Court