

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

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CA 23-01621

PRESENT: LINDLEY, J.P., BANNISTER, OGDEN, GREENWOOD, AND KEANE, JJ.

IN THE MATTER OF JONATHAN SPAETH,
PETITIONER-APPELLANT,

V

MEMORANDUM AND ORDER

ANTHONY ANNUCCI, 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 (BEEZLY J. KIERNAN OF
COUNSEL), FOR RESPONDENT-RESPONDENT.

Appeal from a judgment of the Supreme Court, Wyoming County
(Michael M. Mohun, A.J.), entered September 14, 2023, 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 2022. 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 2024 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]). Contrary to petitioner's contention, 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: July 26, 2024

Ann Dillon Flynn
Clerk of the Court