

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

645

CA 16-00228

PRESENT: CARNI, J.P., LINDLEY, DEJOSEPH, CURRAN, AND TROUTMAN, JJ.

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IN THE MATTER OF MICHAEL BETHEA,  
PETITIONER-APPELLANT,

V

MEMORANDUM AND ORDER

ANTHONY ANNUCCI, ACTING COMMISSIONER, NEW YORK  
STATE DEPARTMENT OF CORRECTIONS AND COMMUNITY  
SUPERVISION, RESPONDENT-RESPONDENT.

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WYOMING COUNTY-ATTICA LEGAL AID BUREAU, WARSAW (ADAM W. KOCH OF  
COUNSEL), FOR PETITIONER-APPELLANT.

ERIC T. SCHNEIDERMAN, ATTORNEY GENERAL, ALBANY (JEFFREY W. LANG OF  
COUNSEL), FOR RESPONDENT-RESPONDENT.

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Appeal from a judgment of the Supreme Court, Wyoming County  
(Michael M. Mohun, A.J.), entered January 20, 2016 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  
petition pursuant to CPLR article 78 seeking to annul the  
determination of the Parole Board denying him parole release. We  
conclude that "[t]his appeal must be dismissed as moot because the  
determination expired during the pendency of this appeal, and the  
Parole Board denied petitioner's subsequent request for parole  
release" (*Matter of Porter v Annucci*, 148 AD3d 1779, 1779).  
Contrary to petitioner's contention, the exception to the mootness  
doctrine does not apply here (*see generally Matter of Hearst Corp. v  
Clyne*, 50 NY2d 707, 714-715).

Entered: June 9, 2017

Frances E. Cafarell  
Clerk of the Court