

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

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KAH 20-01256

PRESENT: WHALEN, P.J., SMITH, LINDLEY, TROUTMAN, AND WINSLOW, JJ.

THE PEOPLE OF THE STATE OF NEW YORK EX REL.
MARVIN BILLINGER, PETITIONER-APPELLANT,

V

MEMORANDUM AND ORDER

JOHN HARPER, SUPERINTENDENT, MOHAWK CORRECTIONAL
FACILITY, AND ANTHONY ANNUCCI, ACTING
COMMISSIONER, NEW YORK STATE DEPARTMENT OF
CORRECTIONS AND COMMUNITY SUPERVISION,
RESPONDENTS-RESPONDENTS.

THE LEGAL AID SOCIETY, NEW YORK CITY (NATALIE REA OF COUNSEL), FOR
PETITIONER-APPELLANT.

LETITIA JAMES, ATTORNEY GENERAL, ALBANY (BRIAN D. GINSBERG OF
COUNSEL), FOR RESPONDENTS-RESPONDENTS.

Appeal from a judgment (denominated order) of the Supreme Court, Oneida County (Erin P. Gall, J.), entered August 6, 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 denying his petition for a writ of habeas corpus. Because petitioner concedes that he has been released to parole supervision, the appeal has been rendered moot (*see People ex rel Bush v Awopetu*, 187 AD3d 1580, 1580 [4th Dept 2020], *lv denied* 36 NY3d 906 [2021]; *People ex rel. Sabino v New York State Dept. of Corr. & Community Supervision*, 178 AD3d 1446, 1447 [4th Dept 2019]), 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]; *see generally Matter of Hearst Corp. v Clyne*, 50 NY2d 707, 714-715 [1980]). 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: October 1, 2021

Ann Dillon Flynn
Clerk of the Court