

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

377

CA 23-00950

PRESENT: WHALEN, P.J., CURRAN, GREENWOOD, NOWAK, AND KEANE, JJ.

IN THE MATTER OF MARCELINO LOPEZ,
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 (FRANK BRADY OF COUNSEL), FOR
RESPONDENT-RESPONDENT.

Appeal from a judgment of the Supreme Court, Wyoming County
(Michael M. Mohun, A.J.), entered May 4, 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
Parole Board that denied his request for release to parole
supervision. The Attorney General has advised this Court that,
following that denial and during the pendency of this appeal,
petitioner reappeared before the Parole Board in April 2024, and was
subsequently denied parole. Consequently, this appeal must be
dismissed as moot (*see Matter of Hill v Annucci*, 149 AD3d 1540, 1541
[4th Dept 2017]). Contrary to petitioner's contention, the exception
to the mootness doctrine does not apply (*see Matter of Lopez-Contreras
v Annucci*, 221 AD3d 1580, 1580 [4th Dept 2023]; *see generally Matter
of Hearst Corp. v Clyne*, 50 NY2d 707, 714-715 [1980]).

Entered: July 3, 2024

Ann Dillon Flynn
Clerk of the Court