

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

1197

KAH 20-00549

PRESENT: PERADOTTO, J.P., CARNI, LINDLEY, CURRAN, AND BANNISTER, JJ.

THE PEOPLE OF THE STATE OF NEW YORK EX REL.
ROBERT S. DEAN, ESQ., ON BEHALF OF IRA GOLDBERG,
PETITIONER-APPELLANT,

V

MEMORANDUM AND ORDER

PATRICK REARDON, SUPERINTENDENT, MARCY
CORRECTIONAL FACILITY, AND ANTHONY ANNUCCI,
ACTING COMMISSIONER, NEW YORK STATE DEPARTMENT
OF CORRECTIONS AND COMMUNITY SUPERVISION,
RESPONDENTS-RESPONDENTS.

ROBERT S. DEAN, CENTER FOR APPELLATE LITIGATION, NEW YORK CITY
(ALEXANDRA L. MITTER OF COUNSEL), FOR PETITIONER-APPELLANT.

LETITIA JAMES, ATTORNEY GENERAL, ALBANY (SARAH L. ROSENBLUTH OF
COUNSEL), FOR RESPONDENTS-RESPONDENTS.

Appeal from a judgment (denominated order and judgment) of the Supreme Court, Oneida County (David A. Murad, J.), entered May 1, 2020 in a habeas corpus proceeding. The judgment granted the motion of respondents to dismiss the petition.

It is hereby ORDERED that said appeal is unanimously dismissed without costs.

Memorandum: Petitioner commenced this proceeding seeking a writ of habeas corpus on behalf of Ira Goldberg, who was incarcerated at Marcy Correctional Facility at the time the petition was filed. Petitioner alleged that, due to Goldberg's age and preexisting medical conditions, his incarceration placed him at heightened risk of serious illness or death from COVID-19. Respondents moved to dismiss the petition for failure to state a cause of action, and Supreme Court granted the motion. Petitioner appeals.

Goldberg died after oral argument of this appeal, but prior to this Court's decision. The substantive relief sought in the petition was a judgment directing Goldberg's immediate release from prison. Thus, Goldberg's death renders the appeal moot, and no exception to the mootness doctrine applies (*see generally People ex rel. Peterson v LeConey*, 122 AD3d 1299, 1299 [4th Dept 2014], *lv denied* 24 NY3d 916 [2015]).

Entered: February 11, 2021

Mark W. Bennett
Clerk of the Court