

State of New York
Supreme Court, Appellate Division
Third Judicial Department

Decided and Entered: October 30, 2008

503149

In the Matter of ANTHONY
BOTTOM,

Appellant,

v

MEMORANDUM AND ORDER

NEW YORK STATE BOARD OF PAROLE,
Respondent.

Calendar Date: September 2, 2008

Before: Cardona, P.J., Peters, Rose, Kavanagh and Stein, JJ.

Cheryl L. Kates, Honeoye, for appellant.

Andrew M. Cuomo, Attorney General, Albany (Owen Demuth of
counsel), for respondent.

Cardona, P.J.

Appeals (1) from a judgment of the Supreme Court (Donahue, J.), entered July 31, 2007 in Albany County, which, in a proceeding pursuant to CPLR article 78, granted respondent's motion to dismiss the petition, and (2) from an order of said court, entered March 4, 2008 in Albany County, which denied petitioner's motion for reconsideration.

Petitioner is serving a prison sentence of 25 years to life for his conviction of two counts of murder in the second degree. In 2006, he made his third appearance before respondent and his request for release was denied. After exhausting his administrative remedies, petitioner commenced this CPLR article 78 proceeding challenging that determination. Supreme Court, finding that petitioner's extradition to California during the

pendency of the appeal rendered the matter moot, dismissed the petition. Petitioner's subsequent motion to reargue was denied.

Upon review of petitioner's arguments, we conclude that the petition was properly dismissed. Petitioner has been extradited to California and is no longer "in the custody of a correctional facility as an inmate in connection with which [respondent] has parole jurisdiction" (Matter of Beattie v New York State Bd. of Parole, 39 NY2d 445, 447 [1976]; see People ex rel. Matthews v New York State Div. of Parole, 95 NY2d 640, 644 n 1 [2001]; People ex rel. De Gina v McMahon, 29 NY2d 550 [1971]; People ex rel. Bilboa v Romano, 106 AD2d 595 [1984]).

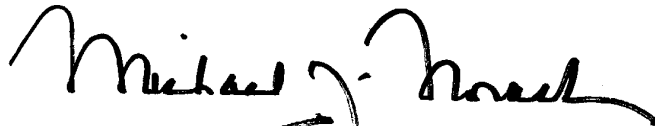
Finally, no appeal lies as of right from the denial of a motion to reargue (see Matter of Morales v Travis, 32 AD3d 1094 [2006], lv denied 7 NY3d 917 [2006]).

Peters, Rose, Kavanagh and Stein, JJ., concur.

ORDERED that the judgment is affirmed, without costs.

ORDERED that the appeal from the order is dismissed, without costs.

ENTER:



Michael J. Novack
Clerk of the Court