

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

Decided and Entered: January 18, 2018

524953

In the Matter of JUAN FRANCO,
Petitioner,

v

MEMORANDUM AND JUDGMENT

NEW YORK STATE BOARD OF PAROLE,
Respondent.

Calendar Date: November 13, 2017

Before: Garry, P.J., Clark, Mulvey, Aarons and Rumsey, JJ.

Alfred O'Connor, New York State Defenders Association,
Albany (Matthew McGowan of Prisoners' Legal Services New York, of
counsel), for petitioner.

Eric T. Schneiderman, Attorney General, Albany (Frank Brady
of counsel), for respondent.

Aarons, J.

Proceeding pursuant to CPLR article 78 (transferred to this
Court by order of the Supreme Court, entered in Albany County) to
review a determination of respondent rescinding petitioner's open
release date and imposing a hold period of 18 months.

As a result of two separate stabbing incidents, petitioner
was convicted of a number of crimes, the most serious being
murder in the second degree, for which he was sentenced to 20
years to life in prison. While in prison, he was charged with
additional crimes and was thereafter convicted upon his plea of
guilty of attempted promoting prison contraband in the first
degree. Petitioner was sentenced to an additional 1½ to 3 years
in prison, to run consecutively to his other sentences.

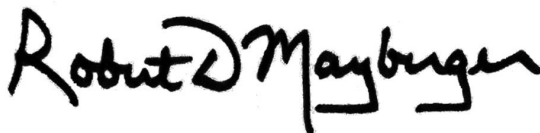
In March 2016, petitioner made his fourth appearance before respondent seeking to be released to parole supervision. At the conclusion of the hearing, respondent issued a determination, with one commissioner dissenting, granting petitioner parole and setting an open release date of May 12, 2016. A rescission hearing was subsequently conducted in July 2016 and, at its conclusion, respondent issued a determination, with one commissioner dissenting, rescinding petitioner's release and ordering him held for an additional 18 months. After this determination was affirmed on administrative appeal, petitioner commenced this CPLR article 78 proceeding.

Petitioner's counsel has advised this Court that petitioner was released to parole supervision on December 5, 2017. Accordingly, the parties argue, and we agree, that the petition must be dismissed as moot (see Matter of Mitchell v Travis, 14 AD3d 955, 956 [2005]).

Garry, P.J., Clark, Mulvey and Rumsey, JJ., concur.

ADJUDGED that the petition is dismissed, as moot, without costs.

ENTER:

A handwritten signature in black ink that reads "Robert D. Mayberger". The signature is written in a cursive, slightly slanted style.

Robert D. Mayberger
Clerk of the Court