

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

Decided and Entered: December 13, 2018

525856

In the Matter of JOHN
MUGGELBERG,
Appellant,

v

MEMORANDUM AND ORDER

NEW YORK STATE BOARD OF
PAROLE,
Respondent.

Calendar Date: October 26, 2018

Before: Garry, P.J., Egan Jr., Lynch, Devine and Clark, JJ.

John Muggelberg, Moravia, appellant pro se.

Appeal from a judgment of the Supreme Court (Nichols, J.), entered October 24, 2017 in Albany County, which dismissed petitioner's application, in a proceeding pursuant to CPLR article 78, to review a determination of respondent denying petitioner's request for parole release.

Petitioner is serving a prison term of 25 years to life following his conviction of murder in the second degree. In August 2016, petitioner made his fifth appearance before respondent seeking to be released on parole supervision. Respondent denied his request and ordered him to be held for 24 months, which determination was affirmed on administrative appeal. Petitioner commenced this CPLR article 78 proceeding and, following joinder of issue, Supreme Court dismissed the petition. This appeal ensued.

While this appeal was pending, petitioner reappeared before respondent and was again denied parole release. As a result, the appeal is now moot and must be dismissed, and the narrow exception to the mootness doctrine is inapplicable (see Matter of Hynes v Stanford, 148 AD3d 1383, 1383 [2017]; Matter of Escobar v New York State Board of Parole, 145 AD3d 1284, 1285 [2016]).

Garry, P.J., Egan Jr., Lynch, Devine and Clark, JJ.,
concur.

ORDERED that the appeal 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