

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

Decided and Entered: December 14, 2017

524113

In the Matter of ANTHONY
FRAGOSA,
Appellant,

v

MEMORANDUM AND ORDER

CHERYL V. MORRIS, as Director
of Ministerial, Family and
Volunteer Services of the
Department of Corrections
and Community Supervision,
Respondent.

Calendar Date: October 24, 2017

Before: McCarthy, J.P., Egan Jr., Rose, Aarons and Pritzker, JJ.

Anthony Fragosa, Auburn, appellant pro se.

Eric T. Schneiderman, Attorney General, Albany (Allyson B. Levine of counsel), for respondent.

Appeal from a judgment of the Supreme Court (Maney, J.), entered October 10, 2016 in Albany County, which dismissed petitioner's application, in a proceeding pursuant to CPLR article 78, to review a determination of the Department of Corrections and Community Supervision denying his request to participate in the family reunion program.

Petitioner is serving an aggregate prison sentence of 50 years to life due to his conviction for, among other things, two counts of murder in the second degree (People v Fregosi, 258 AD2d 259 [1999], lvs denied 93 NY2d 970 [1999]). In May 2015, and while he was incarcerated at Attica Correctional Facility,

petitioner submitted an application to participate in the family reunion program at Attica, and that application was denied. Petitioner was thereafter transferred to Auburn Correctional Facility, and he attempted to administratively appeal the denial of his application. Petitioner's administrative appeal was rejected as untimely. Meanwhile, in October 2015, petitioner submitted a second application to participate in the family reunion program at Auburn, and that application was also denied. There is no indication that petitioner appealed from the denial of his October 2015 application. Petitioner commenced this CPLR article 78 proceeding challenging the denial of his May 2015 application to the family reunion program at Attica, and Supreme Court thereafter dismissed the petition, prompting this appeal.

The more recent denial of petitioner's October 2015 application to the family reunion program renders moot his challenges to the earlier denial of his May 2015 application (see Matter of DeChimay v New York State Dept. of Corr. & Community Supervision, 152 AD3d 1128, 1129 [2017]; Matter of Graziano v Travis, 21 AD3d 1174, 1174 [2005]). Moreover, the circumstances here do not fall within the exception to the mootness doctrine.

McCarthy, J.P., Egan Jr., Rose, Aarons and Pritzker, JJ., concur.

ORDERED that the appeal is dismissed, as moot, without costs.

ENTER:



Robert D. Mayberger
Clerk of the Court