

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

Decided and Entered: September 19, 2019

526509

THE PEOPLE OF THE STATE OF
NEW YORK ex rel. RONDUE
GENTRY,

Appellant,

v

MEMORANDUM AND ORDER

CRAIG D. APPLE, as Sheriff
of Albany County.

Respondent.

Calendar Date: August 30, 2019

Before: Garry, P.J., Aarons, Rumsey and Pritzker, JJ.

Rondue Gentry, Attica, appellant pro se.

Daniel C. Lynch, County Attorney, Albany (Michael Goldstein of counsel), for respondent.

Appeal from a judgment of the Supreme Court (McDonough, J.), entered December 8, 2017 in Albany County, which dismissed petitioner's application, in a proceeding pursuant to CPLR article 70, without a hearing.

In November 2017, while he was being held in the Albany County jail, petitioner commenced this proceeding pursuant to CPLR article 70 against respondent seeking a writ of habeas corpus directing his release. Supreme Court dismissed the application without a hearing. Petitioner, in turn, filed a pro se notice of appeal. However, in March 2018, while his appeal was still pending, petitioner was transferred to the custody of

the Department of Corrections and Community Supervision to serve his seven-year prison sentence upon his conviction of the crime of attempted criminal possession of a weapon in the second degree. Inasmuch as respondent no longer has custody of petitioner, petitioner's appeal is now moot and must be dismissed (see People ex rel. Kearney v Bartlett, 131 AD3d 1313, 1314 [2015]).

Garry, P.J., Aarons, Rumsey and Pritzker, JJ., concur.

ORDERED that the appeal is dismissed, 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