

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

Decided and Entered: June 20, 2019

527691

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In the Matter of ROBERTO  
TORRES,  
Appellant,

v

MEMORANDUM AND ORDER

TINA M. STANFORD, as Chair of  
the Board of Parole,  
et al.,  
Respondents.

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Calendar Date: June 5, 2019

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

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Roberto Torres, Otisville, appellant pro se.

Letitia James, Attorney General, Albany (Frederick A. Brodie of counsel), for respondents.

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Aarons, J.

Appeal from a judgment of the Supreme Court (McKeighan, J.), entered July 10, 2018 in Washington County, which, in a proceeding pursuant to CPLR article 78, granted respondents' motion to dismiss the petition.

Petitioner is serving a prison term of 22 years to life following his conviction of murder in the second degree. In April 2017, petitioner appeared before the Board of Parole, which, following a hearing, denied his request for parole release and imposed a hold of 24 months. That determination was

affirmed upon administrative appeal. Thereafter, petitioner commenced this CPLR article 78 proceeding challenging that determination. Supreme Court subsequently granted respondents' motion to dismiss the petition as untimely and noted that, in any event, the issues raised in the petition were unpreserved for review because they were not raised upon administrative appeal. Petitioner appeals.

Initially, respondents concede that the petition should not have been dismissed as untimely given information provided by petitioner reflecting that the petition was timely filed in December 2017, but was returned to petitioner due to a mistake in the filing process.<sup>1</sup> Because any error was subsequently corrected by petitioner, and given the acknowledgement by respondents that no prejudice resulted, the mistake in the filing process should have been excused and the petition deemed timely (see CPLR 2001; see e.g. Matter of General Elec. Capital Corp. v Loretto-Utica Residential Health Care Facility, 77 AD3d 1468, 1470 [2010]). Rather than remit the matter to Supreme Court, however, we find that the record adequately allows us to determine the merits of the issues briefed by the parties, and we will do so in the interest of judicial economy (see Matter of Vaughn v Koltowski, 91 AD3d 1002, 1003 n [2012], lv denied 19 NY3d 802 [2012]; Matter of Williams v Travis, 20 AD3d 622, 623 [2005]; Matter of Geames v Travis, 284 AD2d 843, 843 [2001], appeal dismissed 97 NY3d 639 [2001]).

To that end, we note, and respondents do not dispute, that the claim asserted by petitioner is preserved as it could not have been raised upon administrative appeal. Specifically, petitioner challenges the fact that the administrative appeals unit relied upon inaccurate information regarding his criminal history in affirming the Board's denial of parole. A review of the statement by the appeals unit inaccurately reported that petitioner murdered six, as opposed to four, people. "Because of the likelihood that such error may have affected" the decision to affirm the Board's denial of petitioner's request for parole release, proper administrative review is required

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<sup>1</sup> It appears from the record that the filing mistake consisted of petitioner's failure to purchase an index number and request judicial intervention.

(Matter of Brazill v New York State Bd. of Parole, 76 AD2d 864, 864 [1980]; see Matter of Clark v New York State Bd. of Parole, 166 AD3d 531, 531-532 [2018]; Matter of Williams v Travis, 20 AD3d at 623; compare Matter of Rossney v New York State Bd. of Parole, 267 AD2d 648, 649 [1999], lv denied 94 NY2d 759 [2000]). As such, the judgment is reversed. Petitioner's request for further relief is without merit.

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

ORDERED that the judgment is reversed, on the law, without costs, motion denied and matter remitted to the Board of Parole for further proceedings not inconsistent with this Court's decision.

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