

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

Decided and Entered: December 10, 2020

530709

In the Matter of JAMES SMITH,
Appellant,

v

COMMISSIONER OF NEW YORK
STATE BOARD OF PAROLE,
Respondent.

MEMORANDUM AND ORDER

Calendar Date: November 13, 2020

Before: Egan Jr., J.P., Clark, Pritzker, Reynolds Fitzgerald
and Colangelo, JJ.

James Smith, Collins, appellant pro se.

Letitia James, Attorney General, Albany (Beezly Kiernan of
counsel), for respondent.

Appeal from a judgment of the Supreme Court (Collins, J.),
entered December 16, 2019 in Albany County, which dismissed
petitioner's application, in a proceeding pursuant to CPLR
article 78, to review a determination of the Board of Parole
denying petitioner's request for parole release.

Petitioner commenced this CPLR article 78 proceeding
challenging a September 2018 determination of the Board of
Parole denying his third request for parole release. Supreme
Court dismissed the petition and this appeal ensued. The
Attorney General has advised this Court that, during the
pendency of this appeal, petitioner reappeared before the Board
and was denied parole. In view of this, the appeal is now moot

and, contrary to petitioner's contention, we find that the exception to the mootness doctrine is inapplicable (see generally Matter of Hearst Corp. v Clyne, 50 NY2d 707, 714-715 [1980]). As such, the appeal must be dismissed (see Matter of Cruz v Division of Parole, N.Y. State Dept. of Corr. & Community Supervision, 185 AD3d 1369, 1369 [2020]; Matter of Burr v New York State Dept. of Corr. & Community Supervision, Bd. of Parole, 185 AD3d 1361, 1361 [2020], lv dismissed and denied ___ NY3d ___ [Nov. 24, 2020]).

Egan Jr., J.P., Clark, Pritzker, Reynolds Fitzgerald and Colangelo, 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