

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

Decided and Entered: May 13, 2021

530620

In the Matter of RICKY
CALDWELL,
Appellant,

v

MEMORANDUM AND ORDER

ALICIA SMITH-ROBERTS, as
Director of Ministerial,
Family and Volunteer
Services,
Respondent.

Calendar Date: April 16, 2021

Before: Garry, P.J., Egan Jr., Clark, Aarons and
Reynolds Fitzgerald, JJ.

Ricky Caldwell, Ossining, appellant pro se.

Letitia James, Attorney General, Albany (Allyson B. Levine
of counsel), for respondent.

Appeal from a judgment of the Supreme Court (Rivera, J.),
entered December 11, 2019 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 petitioner's
request to participate in the family reunion program.

Petitioner is serving an aggregate sentence of 50 years to
life due to his conviction for, among other things, attempted
murder in the first degree, stemming from his shooting at police

officers who were attempting to arrest him for auto theft. In February 2018, he applied to participate in the family reunion program (hereinafter FRP) with his spouse. Petitioner's application was subject to special review and was forwarded to the Central Office (see 7 NYCRR 220.2 [c]). The Central Office denied the application and the denial was upheld on administrative appeal.

Petitioner commenced this CPLR article 78 proceeding challenging the denial of his application. Supreme Court dismissed the petition, finding that there was a rational basis for the denial of the application, and petitioner appealed. While this appeal was pending, petitioner filed another application to participate in the FRP with his spouse, which was also denied by the Central Office. Petitioner's subsequent FRP application renders his appeal of the denial of his February 2018 application moot and, as the narrow exception to the mootness doctrine is inapplicable, this appeal must be dismissed (see Matter of Shapard v Annucci, 177 AD3d 1048, 1050 [2019]; Matter of Fragosa v Morris, 156 AD3d 1072, 1072 [2017]).

Garry, P.J., Egan Jr., Clark, Aarons and Reynolds
Fitzgerald, JJ., concur.

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

ENTER:



Robert D. Mayberger
Clerk of the Court