

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

Decided and Entered: April 1, 2021

531826

THE PEOPLE OF THE STATE OF
NEW YORK ex rel. VINCENT
MACALUSO JR.,

Appellant,

v

MEMORANDUM AND ORDER

WILLIAM KEYSER, as
Superintendent of Sullivan
Correctional Facility,
Respondent.

Calendar Date: March 5, 2021

Before: Garry, P.J., Lynch, Clark, Pritzker and Reynolds
Fitzgerald, JJ.

Vincent Macaluso Jr., Fallsburg, appellant pro se.

Letitia James, Attorney General, Albany (Frank Brady of
counsel), for respondent.

Appeal from an order of the Supreme Court (Schick, J.),
entered August 5, 2020 in Sullivan County, which denied
petitioner's application for a writ of habeas corpus, in a
proceeding pursuant to CPLR article 70, without a hearing.

Petitioner is an inmate at Sullivan Correctional Facility
(hereinafter SCF) serving a prison sentence of 20 years upon his
conviction of robbery in the first degree, and is eligible for
parole in 2029 (People v Macaluso, 144 AD3d 947 [2016], lv
denied 28 NY3d 1186 [2017]). In April 2020, he filed an

application for a writ of habeas corpus seeking his immediate release from SCF asserting that his underlying health conditions place him at increased risk if infected with the novel coronavirus responsible for causing COVID-19. Respondent moved to dismiss, submitting an affidavit detailing the protocols and policies in place at SCF to address the spread of COVID-19 as of July 7, 2020. Supreme Court denied the application on the merits, based upon People ex rel. Carroll v Keyser (184 AD3d 189, 192-193 [2020]), in which we denied an application for a writ of habeas corpus filed by another SCF inmate the same month. Petitioner appeals.

We have reviewed the individual facts unique to petitioner's circumstances, i.e., relative to his age and physical condition. Upon consideration, we find that petitioner has failed to meet his burden of demonstrating that his detention at SCF was illegal or unconstitutional (see CPLR 7002 [a]; 7010 [a]; People ex rel. Carroll v Keyser, 184 AD3d at 192-193; People ex rel. Ferro v Brann, 183 AD3d 758, 758 [2020]). The basis of this determination is set forth in People ex rel. Figueroa v Keyser (___ AD3d ___ [decided herewith]) relative to both petitioner's Eighth Amendment claim and his substantive due process claim, and we adopt that analysis here. Petitioner's remaining claims have been examined and none establishes the illegality of his incarceration or his entitlement to immediate release (see People ex rel. Brown v New York State Div. of Parole, 70 NY2d 391, 398 [1987]; People ex rel. Kaplan v Commissioner of Correction of City of N.Y., 60 NY2d 648, 649 [1983]). Accordingly, we find that Supreme Court properly denied the application.

Garry, P.J., Lynch, Clark, Pritzker and Reynolds
Fitzgerald, J.J., concur.

ORDERED that the order is affirmed, without costs.

ENTER:

A handwritten signature in black ink, reading "Robert D. Mayberger". The signature is written in a cursive style with a large, prominent "R" and "M".

Robert D. Mayberger
Clerk of the Court