

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

Decided and Entered: April 1, 2021

531858

THE PEOPLE OF THE STATE OF
NEW YORK ex rel. HENRY
KIERNAN,

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.

Henry Kiernan, 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) who is serving a 19-year prison sentence upon
his conviction of rape in the first degree and other crimes, and
is eligible for parole in August 2021. In May 2020, petitioner
filed this proceeding for a writ of habeas corpus seeking his

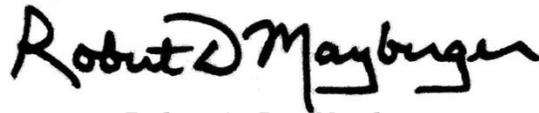
immediate release, alleging that his underlying medical conditions and age place him in danger of significant illness or death if infected with the novel coronavirus that causes COVID-19. Petitioner alleged, among other things, that the conditions of his confinement amount to cruel and unusual punishment under the US and NY Constitutions (US Const, 8th Amend; NY Const, art I, § 5). Respondent moved to dismiss, submitting an affidavit detailing the protocols and policies in place to address the spread of COVID-19 at SCF as of July 7, 2020, including preventative measures, isolation and quarantine practices and expanded inmate testing, and indicated that all SCF inmates who had tested positive for COVID-19 had recovered. Supreme Court denied the application on the merits, based upon our decision in People ex rel. Carroll v Keyser (184 AD3d 189 [2020]). Petitioner appeals.

We have reviewed the individual facts unique to petitioner's circumstances, i.e., relative to his age and physical condition. Following review, 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 that reads "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