

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

Decided and Entered: April 1, 2021

531909

THE PEOPLE OF THE STATE OF
NEW YORK ex rel. THEODORE
SIMPSON,

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.

Theodore Simpson, 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 lengthy prison sentences for multiple
convictions of murder in the second degree and other crimes, and
is not eligible for parole until 2060 (People v Simpson, 284
AD2d 238 [2001], lv denied 96 NY2d 942 [2001]; People v Simpson,

273 AD2d 40 [2000], lv denied 95 NY2d 871 [2000]; People v Simpson, 262 AD2d 177 [1999], lv denied 94 NY2d 829 [1999]). He filed an application for a writ of habeas corpus in April 2020 seeking his immediate release, asserting that he has health conditions that 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 preventative policies in place to address the spread of COVID-19 at SCF. Supreme Court denied the application on the merits, based upon People ex rel. Carroll v Keyser (184 AD3d 189, 192-193 [2020]).¹ 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, JJ., concur.

¹ Contrary to petitioner's claim, although Supreme Court initially signed an order to show cause for relief under CPLR article 78, petitioner's submissions sought immediate release under CPLR article 70. The court properly treated the application as seeking a writ of habeas corpus, and did not convert it to or treat it as a proceeding under CPLR article 78.

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