

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

Decided and Entered: April 1, 2021

531959

THE PEOPLE OF THE STATE OF
NEW YORK ex rel. SCHARKEY
JAMES,

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.

Scharkey James, 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 22 years to life
upon his conviction of robbery in the first degree and another
crime, and is eligible for parole in 2034 (People v James, 170
AD3d 477 [2019], lv denied 33 NY3d 1070 [2019]). In May 2020,

petitioner 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 granted the motion and denied the application on the merits, based upon 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. 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.¹

¹ Petitioner reportedly filed a grievance in April 2020 challenging the conditions of his confinement and the COVID-related protocols, which is not before us, and any challenge to the administrative determination must be raised in a proceeding pursuant to CPLR article 78 (see Jones v State of New York, 171 AD3d 1362, 1364 [2019], appeal dismissed 33 NY3d 1056 [2019]). Likewise, petitioner's arguments addressing factors relevant to discretionary or medical parole release are not properly raised in a proceeding for a writ of habeas corpus (see Executive Law §§ 259-i [2] [c]; 259-s).

Garry, P.J., Lynch, Clark, Pritzker and Reynolds
Fitzgerald, JJ., 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, slightly slanted style with a prominent initial "R".

Robert D. Mayberger
Clerk of the Court