

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

Decided and Entered: November 10, 2022

534124

THE PEOPLE OF THE STATE OF
NEW YORK ex rel. ANSELMO
SOTO JR.,

Appellant,

MEMORANDUM AND ORDER

v

BOARD OF PAROLE et al.,
Respondents.

Calendar Date: October 19, 2022

Before: Egan Jr., J.P., Clark, Pritzker, Reynolds Fitzgerald
and Ceresia, JJ.

Anselmo Soto Jr., Utica, appellant pro se.

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

Pritzker, J.

Appeal from a judgment of the Supreme Court (Michael R.
Cuevas, J.), entered September 7, 2021 in Franklin County, which
dismissed petitioner's application, in a proceeding pursuant to
CPLR article 70, after a hearing.

In 2020, petitioner, who was on parole release, was
arrested for alleged threatening behavior and received an
appearance ticket. Petitioner was nevertheless detained in
police custody pending the approval of a parole violation
warrant. A parole violation warrant was subsequently issued and,

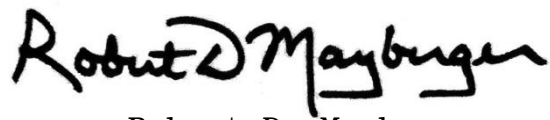
following an ensuing parole violation hearing, petitioner was found to have violated his parole and was ordered held until the maximum expiration of his sentence – which decision was affirmed upon administrative appeal. Thereafter, petitioner commenced this CPLR article 70 proceeding, alleging that his temporary detention prior to obtaining a parole violation warrant was illegal, and sought immediate release as well as dismissal of the subsequent parole revocation proceeding. Following a hearing, Supreme Court, among other things, denied the application, finding that, although the temporary warrantless detention of petitioner during the few hours in which a parole violation warrant was obtained was unauthorized, the statutory violation did not warrant immediate release or dismissal of the parole revocation proceeding. Petitioner appeals.

The Attorney General has advised this Court that petitioner has been released from custody, having reached the maximum expiration date of his sentence. As such, habeas corpus relief is no longer available. Further, we are unpersuaded by petitioner's contention that the exception to the mootness doctrine applies (*see Matter of Hearst Corp. v Clyne*, 50 NY2d 707, 714-715 [1980]). Accordingly, the appeal must be dismissed as moot (*People ex rel. Kent v New York State Div. of Parole*, 87 AD3d 1205, 1206 [3d Dept 2011]).

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

ORDERED that the appeal is dismissed, as moot, 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, stylized 'R' and 'M'.

Robert D. Mayberger
Clerk of the Court