

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

Decided and Entered: May 30, 2024

CV-23-0891

In the Matter of SMITH
PERCINTHE,

Appellant,

v

MEMORANDUM AND ORDER

DEPARTMENT OF CORRECTIONS
AND COMMUNITY
SUPERVISION,

Respondent.

Calendar Date: May 3, 2024

Before: Garry, P.J., Reynolds Fitzgerald, Fisher, McShan and Powers, JJ.

Smith Percinthe, Napanoch, appellant pro se.

Letitia James, Attorney General, Albany (*Laura Etlinger* of counsel), for respondent.

Reynolds Fitzgerald, J.

Appeal from a judgment of the Supreme Court (Kevin R. Bryant, J.), rendered April 25, 2023 in Albany County, which, in a proceeding pursuant to CPLR article 78, granted respondent's motion to dismiss the petition.

Petitioner, an incarcerated individual, commenced this CPLR article 78 proceeding challenging the special conditions imposed upon his release to parole supervision in 2010, 2012 and 2015 that limited his access to the Internet and social networking sites and seeking to enjoin respondent from enforcing the same special

conditions upon him in the future. Supreme Court granted respondent's subsequent motion to dismiss the petition as moot. This appeal ensued.

We affirm. Typically, "courts are precluded from considering questions which, although once live, have become moot by passage of time or change in circumstances" (*City of New York v Maul*, 14 NY3d 499, 507 [2010] [internal quotation marks and citation omitted]). "In general[,] an appeal will be considered moot unless the rights of the parties will be directly affected by the determination of the appeal and the interest of the parties is an immediate consequence of the judgment" (*Matter of Hearst Corp. v Clyne*, 50 NY2d 707, 714 [1980]; *accord Matter of Canarelli v New York State Dept. of Corr. & Community Supervision*, 177 AD3d 1058, 1059 [3d Dept 2019]).

The record establishes that petitioner is no longer subject to the special conditions he seeks to challenge as the sentence he was serving in connection with the periods of parole supervision, including the period of postrelease supervision, expired on May 8, 2018, prior to the conviction for which he is currently incarcerated. Further, there were no sustained violations of those special conditions while petitioner was released to parole supervision. As such, any adjudication regarding the propriety of special conditions placed upon petitioner during the relevant parole periods will not "result in immediate and practical consequences to the parties" (*Coleman v Daines*, 19 NY3d 1087, 1090 [2012]; *see Matter of Marxuach v New York State Dept. of Corr. & Community Supervision*, 211 AD3d 1442, 1444 [3d Dept 2022]). Further, we are unpersuaded by petitioner's contention that the exception to the mootness doctrine applies because, among other things, challenges to the imposition of special conditions of parole supervision do not typically evade review (*see Matter of Marxuach v New York State Dept. of Corr. & Community Supervision*, 211 AD3d at 1444; *Matter of Boehm v Evans*, 79 AD3d 1445, 1446 [3d Dept 2010], *lv denied* 16 NY3d 707 [2011], *cert denied* 565 US 1159 [2012]; *see also Matter of Karlin v Stanford*, 209 AD3d 1189, 1189-1191 [3d Dept 2022], *lv denied* 39 NY3d 1125 [2023]). In view of the foregoing, Supreme Court properly dismissed the matter as moot (*see Matter of Marxuach v New York State Dept. of Corr. & Community Supervision*, 211 AD3d at 1444).


To the extent that petitioner requests that respondent be enjoined from imposing the same special conditions in the event that he is released to parole supervision in connection with the sentence he is currently serving, such matter involves a future determination by respondent that is too remote and speculative to be justiciable (*see generally Allard v Allard*, 145 AD3d 1254, 1255 [3d Dept 2016]; *Schulz v Cuomo*, 133

AD3d 945, 947-948 [3d Dept 2015], *appeal dismissed* 26 NY3d 1139 [2016], *lv denied* 27 NY3d 907 [2016]; *see also* CPLR 7803 [3]).

Garry, P.J., Fisher, McShan and Powers, JJ., concur.

ORDERED that the judgment is affirmed, without costs.

ENTER:

A handwritten signature in black ink that reads "Robert D. Mayberger". The signature is written in a cursive, flowing style with a large initial "R" and "M".

Robert D. Mayberger
Clerk of the Court