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

Decided and Entered: July 2, 2026 CV-25-0383

In the Matter of WILLIAM A. WILKINS,

Appellant,

v

MEMORANDUM AND ORDER

DANIEL F. MARTUSCELLO III, as Commissioner of Corrections and Community Supervision, et al.,

Respondents.

Calendar Date: May 27, 2026

Before: Aarons, J.P., Pritzker, Ceresia, Fisher and McShan, JJ.

William A. Wilkins, Stormville, appellant pro se.

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

Pritzker, J.

Appeal from a judgment of the Supreme Court (Kimberly O'Connor, J.), entered January 28, 2025 in Albany County, which dismissed petitioner's application, in a proceeding pursuant to CPLR article 78, to review a determination of the Department of Corrections and Community Supervision computing petitioner's prison sentence.

In August 2012, a group of customers formed a line outside a retail store to purchase newly released sneakers (*see People v Wilkins*, 37 NY3d 371, 374 [2021]).

Petitioner and a codefendant, armed with a gun, approached the line of waiting customers and robbed the victims of their wallets, keys, cellphones and jewelry (*see id.*). One person resisted and was shot and killed during the ensuing struggle (*see id.*). Petitioner and his codefendant were subsequently arrested and charged by indictment with murder in the second degree (count 1), three counts of robbery in the first degree (counts 2, 3 and 4) and two counts of attempted robbery in the first degree (counts 5 and 6) for their participation in the crimes. Petitioner was subsequently convicted by jury verdict on all six counts and was sentenced to a prison term of 25 years to life for his conviction of murder in the second degree, three prison terms of 25 years, to be followed by five years of postrelease supervision, for his three convictions of robbery in the first degree, and two prison terms of 15 years, to be followed by five years of postrelease supervision, for his two convictions of robbery in the first degree. At sentencing, the sentences on all counts were ordered to run consecutive to one another. On appeal, the Fourth Department held that the sentencing court erred in directing that the sentence on the felony murder count run consecutively to the consecutive sentences on the robbery and attempted robbery counts and modified the judgment by directing that the sentence imposed on count 1 of the indictment – i.e., the felony murder count – run concurrently with the consecutive sentences imposed on the remaining counts (*see People v Wilkins*, 175 AD3d 867, 869 [4th Dept 2019], *affd* 37 NY3d 371 [2021]).

Based upon the commitment order and the Fourth Department's modification of the sentence, the Department of Corrections and Community Supervision (hereinafter DOCCS) calculated petitioner's maximum sentence to be life in prison (*see* Penal Law § 70.30 [1] [a]) and the minimum sentence to be 90 years,[1] because the 25-year minimum of the indeterminate term of incarceration (murder in the second degree) merged with and is satisfied by service of the longer 90-year aggregate term for all of the consecutive determinate terms of incarceration that were imposed (counts 2 through 6). In July 2024, petitioner commenced this CPLR article 78 proceeding to obtain judicial review of the sentencing calculations made by DOCCS. Following joinder of issue, Supreme Court found that the Fourth Department's decision directed only, as relevant here, that

[1] Adding the consecutive determinate sentences together results in 105 years, six-sevenths of which is 90 years (*see* Penal Law § 70.40 [1] [a] [iii] ["A person who is serving one or more than one indeterminate sentence of imprisonment and one or more than one determinate sentence of imprisonment, which run concurrently may be paroled at any time after the expiration of the minimum period of imprisonment of the indeterminate sentence or sentences, or upon the expiration of six-sevenths of the term of imprisonment of the determinate sentence or sentences, whichever is later."]).

petitioner's indeterminate sentence for his conviction of murder in the second degree run concurrent to his other determinate terms of incarceration and that the Fourth Department's decision did not alter the sentencing court's directive that the determinate sentences for petitioner's conviction on counts 2 through 6 were to run consecutive to one another and that DOCCS properly calculated petitioner's sentence in conformity with the commitment order and governing statutes. Finding no error in DOCCS's computation of petitioner's prison sentence, Supreme Court dismissed the petition. Petitioner appeals.

The gravamen of petitioner's petition is that the consecutive determinate sentences for counts 2 through 6 should merge with and be "vacated" or deemed satisfied by the indeterminate sentence of 25 years to life for his conviction of murder in the second degree (count 1), which petitioner alleges should be the operative sentence. We disagree. As an initial matter, where, as here, a person is sentenced to an indeterminate and determinate terms of incarceration that run concurrently, "[t]he maximum term or terms of the indeterminate sentences and the term or terms of the determinate sentences shall merge in and be satisfied by discharge of the term which has the *longest unexpired time to run*" (Penal Law § 70.30 [1] [a] [emphasis added]; *see People v Awopetu*, 187 AD3d 1576, 1577 [4th Dept 2020], *lv denied* 36 NY3d 909 [2021]; *Matter of Williams v Annucci*, 131 AD3d 1329, 1330 [3d Dept 2015]). Inasmuch as petitioner's sentence for his conviction of murder in the second degree is 25 years to life, DOCCS correctly computed the maximum aggregate sentence to be, by operation of law, life because that is the "longest unexpired time to run" (Penal Law § 70.30 [1] [a]; *see Matter of Williams v Annucci*, 131 AD3d at 1330; *Matter of Lynch v Smith*, 123 AD3d 1279, 1281 [3d Dept 2014]). As for petitioner's minimum sentence, where, as here, "[a] person who is serving one or more than one indeterminate sentence of imprisonment and one or more than one determinate sentence of imprisonment, which run concurrently may be paroled at any time after the expiration of the minimum period of imprisonment of the indeterminate sentence or sentences, or upon the expiration of six-sevenths of the term of imprisonment of the determinate sentence or sentences, *whichever is later*" (Penal Law § 70.40 [1] [a] [iii] [emphasis added]). Here, the minimum term for petitioner's conviction of murder in the second degree (count 1) is 25 years of incarceration, whereas "six-sevenths of the term of imprisonment of the [consecutive aggregate] determinate . . . sentences" (counts 2 through 6) is 90 years (Penal Law § 70.40 [1] [a] [iii]). Thus, inasmuch as the 90-year minimum sentence of incarceration for the consecutive determinate sentences is greater/"later" than the 25-year minimum sentence of incarceration for the indeterminate sentence, the 25-year minimum term is, contrary to petitioner's contention, merged with and satisfied by service of the controlling 90-year minimum sentence of incarceration

(Penal Law § 70.40 [1] [a] [iii]). Accordingly, we discern no error in DOCCS's computation of petitioner's minimum sentence to be 90 years.

We reject petitioner's claim that the Fourth Department's decision "extinguished" the determinate sentences imposed for his robbery and attempted robbery convictions (counts 2 through 6) by directing those sentences to run concurrently with the sentence for felony murder (count 1). Rather, the Fourth Department's decision required the sentence for felony murder to run concurrently – and not consecutively – to the sentences imposed for the robbery and attempted robbery convictions (counts 2 through 6) because neither the indictment nor the jury verdict established whether any of the robberies and attempted robberies were separate and distinct acts from the felony murder (*see People v Wilkins*, 175 AD3d at 869, citing *People v Glover*, 117 AD3d 1477, 1478 [4th Dept 2014], *lv denied* 23 NY3d 1036 [2014]; *see generally People v Parks*, 95 NY2d 811, 814 [2000]).

Finally, to the extent that petitioner challenges the legality and/or constitutionality of his sentence, such claims are not properly before us and must be pursued in an appropriate proceeding before the appropriate court (*see Matter of Rahman v Annucci*, 219 AD3d 1040, 1042 [3d Dept 2023]; *Matter of Olutosin v Annucci*, 174 AD3d 1262, 1264 [3d Dept 2019], *lv denied* 34 NY3d 908 [2020]). Petitioner's remaining arguments, to the extent not specifically addressed, are either academic in light of our decision or have been considered and found to be without merit.

Aarons, J.P., Ceresia, Fisher and McShan, JJ., concur.

ORDERED that the judgment is affirmed, without costs.

ENTER:

Robert D. Mayberger
Clerk of the Court