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### Habeas Response - FUSL000141 (2021-08-03)

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STATE OF NEW YORK  
SUPREME COURT                      COUNTY OF ULSTER

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PEOPLE OF THE STATE OF NEW YORK,  
ex rel. MARTHA RAYNER, ESQ. on behalf of  
██████████

*Relator,*

-against-

**RETURN**

ANTHONY ANNUCCI,  
ACTING COMMISSIONER,  
NEW YORK STATE DEPARTMENT OF  
CORRECTIONS AND COMMUNITY  
SUPERVISION,

Index No. ██████████

*Respondent.*

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Helena O. Pederson, an attorney licensed in the State of New York, affirms the following under penalty of perjury pursuant to CPLR 2106:

1. I am an Assistant Attorney General of Counsel in this matter to Letitia James, Attorney General of the State of New York, attorney for Respondent Anthony Annucci, Acting Commissioner, New York State Department of Corrections and Community Supervision (“DOCCS” or “the Department”).

2. I have been assigned to defend the within proceeding, I am acquainted with the underlying circumstances, and I have personally examined the records of the above-named Respondent.

3. The Return is true to my knowledge, except as to those matters alleged on information and belief, and as to those matters, I believe them to be true.

4. Upon information and belief, the Relator in this case is currently in the custody of DOCCS at Eastern Correctional Facility.

5. In his Petition dated July 28, 2021, Relator challenges his continued detention at Eastern Correctional Facility. See generally Petition.

6. Relator argues that, in a decision dated April 9, 2021, he was granted parole, and given an “open date ‘upon receipt of approved field investigation’” with earliest release being set for May 19, 2021. See Petition at ¶5.

7. Relator acknowledges receipt of the April 9, 2021 Parole Decision. See Petition at ¶5 and Exhibit 1.

8. Conditions of release were included in the Parole Decision. See Petition, Exhibit 1, pp. 2-3. Such conditions include, but are not limited to, participation in various programs as directed by Relator’s Parole Officer, such as substance abuse treatment programs and sex offender counseling/treatment programs. See id.

9. Relator argues that by May 18, 2021, or earlier, all release conditions were fulfilled, including approval of his residency post-release, and he was due to be released on May 19, 2021. See Petition at ¶6.

10. On May 18, 2021, Mr. ██████████ was given a hand-written post-it note from his Offender Rehabilitation Counselor that stated: “Hold for SOMTA Article 10 review. No decision as of 5/18/21. Call your family.” See Petition at ¶9 and Exhibit 2.

11. Consequently, Relator argues that despite being granted parole and meeting all conditions for release, he was not released to parole supervision on May 19, 2021, and remains indefinitely detained by Respondent, and as such, has a constitutionally cognizable liberty interest.

12. I make this Return in support of Respondent’s position that (i) Relator was withheld

from parole release in accordance with Department regulations and (ii) Relator's pending release to parole supervision renders this matter moot.

**RELATOR'S RELEASE WAS WITHHELD IN ACCORDANCE WITH  
DEPARTMENT REGULATIONS AND APPLICABLE LAW**

13. On December 17, 1975, Relator was sentenced to a term of 15 years to Life following his convictions for the crime of Murder, 2<sup>nd</sup> Degree (two counts). See Exhibit A.

14. Following an interview with the Board of Parole on April 6, 2021, Relator was given a release decision indicating "OPEN DATE – EARLIEST RELEASE DATE: 5/19/2021 – OR EARLIER." See Petition at Exhibit 1.

15. DOCCS was not able to refer Relator for civil management at that time because he was given an open date by the Board of Parole, did not have a conditional release date and his maximum expiration date is Life.

16. Relator's instant offense involved a sexual component and, accordingly, is designated a felony as defined in the Sex Offender Management and Treatment Act ("SOMTA"). See Exhibit B.

17. As set forth in Article 10 of the Mental Hygiene Law, DOCCS must refer any offender whose offense is a designated felony that was sexually motivated to the NYS Office of Mental Health ("OMH") for Article 10 review. See MHL §§10.03(a), 10.03(g)(4); see also Matter of State of New York v. Rashid, 16 N.Y.3d 1, \*2-3 (Nov. 23, 2010).

18. Thus, although Relator is not subject to the Sex Offender Registration Act ("SORA") or the Sexual Assault Reform Act ("SARA") because his crime predates those laws, he still must be reviewed under Article 10 of the Mental Hygiene Law. See MHL §10.03(g)(4). It is

Respondent's position that offenders subject to such reviews are not deemed ready for release to the community until such review has been completed. See Roache v. AG Office, Civil Action No. 9:12-CV-1034 (LEK/DEP), 2013 U.S. Dist. LEXIS 143493, at \*13 (N.D.N.Y. Aug. 9, 2013) (citing MHL Article 10) ("MHL article 10 provides elaborate measures for review of a detained sex offender's case *prior* to his release from prison to determine whether further confinement under the SOMTA is necessary.").

19. During an Article 10 review, OMH staff conduct a "preliminary review" of the offender's case to determine whether to pursue referral to a case review team for further evaluation. See MHL §10.05(d); Rashid, 16 N.Y.3d at \*4. If, following such review, OMH staff decide to refer the matter to a case review team, notice must be given to the offender. See MHL §10.05(e); Rashid, 16 N.Y.3d at \*4.

20. Here, upon information and belief and as described below, OMH completed its preliminary review of Relator's case and determined not to pursue referral to a case review team for further evaluation. As such, Relator was not provided, and Respondent was not obligated to provide him, the notice required by MHL §10.05(e).

#### **RELATOR'S PENDING RELEASE RENDERS HIS CLAIMS MOOT**

21. Relator commenced this proceeding with the filing of his petition with the Ulster County Supreme Court Clerk on July 28, 2021.

22. Upon information and belief, on August 3, 2021, OMH notified DOCCS that it had completed its Article 10 review of Relator and would not conduct any further review, clearing Relator for release as long as all other conditions of release had been met.

23. Upon information and belief, pursuant to notice received from DOCCS' Office of Classification and Movement on August 3, 2021, Relator is being released from DOCCS custody on August 4, 2021.

24. As a “fundamental principle” of jurisprudence, courts have the power to declare law only when determining the rights of persons in an actual controversy. Thus, they may not pass on academic, hypothetical or moot questions. This ban is founded on the separation of powers doctrine. Hearst Corp. v. Clyne, 50 N.Y.2d 707, 713-14 (1980). See generally Joyce v. Mann, 190 A.D.2d 922 (3d Dept. 1993) (injunctive relief against staff of one facility is moot after an inmate moves to another facility).

25. “A proceeding is considered moot where the rights of the parties are not directly affected by the determination of the proceeding and the interest of the parties is not an immediate consequence of the judgment.” Bath Petroleum Storage Inc. v. New York State Department of Environmental Conservation, 272 A.D.2d 746, 747 (3d Dept. 2000), citing Matter of Hearst Corp. v. Clyne, 50 N.Y.2d 707 (1980). “[W]here changed circumstances prevent [the court] ‘from rendering a decision which would effectually determine an actual controversy between the parties involved,’” the action should be dismissed. Saratoga County Chamber of Commerce, Inc. v. Pataki, 100 N.Y.2d 801, 811 (2003).

26. Generally, “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 N.Y.3d 499, 507 (2010), quoting Matter of Hearst Corp. v. Clyne, 50 N.Y.2d 707 (1980).

27. Because “petitioner has received all the relief to which he is entitled [and seeks],

this proceeding must be dismissed as moot.” Matter of Matter of Loper v. Fischer, 118 A.D.3d 1234, 1234 (3d Dept. 2014); Matter of Griffin v. Fischer, 116 A.D.3d 1305 (3d Dept. 2014).

WHEREFORE, Respondent respectfully requests that the relief requested in the Petition be denied, and that the Petition and this action be dismissed together with such other relief as may be right and just.

Dated: Albany, New York  
August 3, 2021

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