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February 2022

### Art. 78 Motion to Dismiss/Opposition - FUSL000109 (2020-07-28)

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SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF DUTCHESS

\_\_\_\_\_  
In the Matter of the Application of

██████████;

Petitioner,

-against-

TINA M. SANFORD, CHAIR OF THE  
NEW YORK STATE BOARD OF PAROLE,

Respondent.  
\_\_\_\_\_

**Notice of Motion**

Index No: ██████████

Hon. Maria G. Rosa, S.C.J

PLEASE TAKE NOTICE that upon the affirmation of Elizabeth A. Gavin, Assistant Attorney General, dated July 28, 2020, the exhibits annexed thereto, the order to show cause, petition and all other papers filed in these proceedings, the respondent will move at the Dutchess County Courthouse, 10 Market Street, Poughkeepsie, New York, on August 5, 2020, at 9:30 a.m., or as soon thereafter as counsel may be heard, for an order dismissing the petition pursuant to CPLR § 3211(a) on the ground that the matter is moot.

DATED: Poughkeepsie, New York  
July 28, 2020

Yours, etc.,

Letitia James  
Attorney General of the State of New York  
Attorney for Respondent  
One Civic Center Plaza, Suite 401  
Poughkeepsie, New York 12601

BY: /s/ Elizabeth A. Gavin  
Elizabeth A. Gavin  
Assistant Attorney General

TO: Kathy Manley, Esq.  
26 Dinmore Road  
Selkirk, NY 12158

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF DUTCHESS

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In the Matter of the Application of

██████████,

Petitioner,

**Affirmation in Support**

Index No: ██████████

Hon. Maria G. Rosa, S.C.J.

-against-

TINA M. SANFORD, CHAIR OF THE  
NEW YORK STATE BOARD OF PAROLE,

Respondent.

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ELIZABETH A. GAVIN, an attorney admitted to practice before the courts of this state, affirms the following under the penalties of perjury:

1. I am an Assistant Attorney General, of counsel to Letitia James, Attorney General of the State of New York, the attorney for the respondent. I submit this affirmation in support of Respondent's motion to dismiss the proceeding.

2. Judicial review of petitioner's application is precluded on the ground that the matter is moot.

3. Petitioner commenced the instant proceeding pursuant to Article 78 requesting that the Court vacate a decision of the New York State Board of Parole or, in the alternative, grant a de novo interview. While the petition lacks merit, it need not be decided as the matter is moot.

4. Petitioner is currently challenging a July 23, 2019 Parole Board decision denying his discretionary release to parole supervision. The decision, made after considering many factors, directed that petitioner be held for twenty-four months and indicated a re-appearance date of July 21, 2021. Exhibit 1.

5. Petitioner submitted an administrative appeal which was received by the Board of Parole on December 4, 2019. Exhibit 2.

6. Prior to the issuance of a decision on the administrative appeal, however, petitioner was granted a new interview on January 21, 2020. Again, after considering all the required factors, parole was denied. Exhibit 3.

7. Thereafter, on June 15, 2020, a decision was issued dismissing petitioner's administrative appeal as release was previously reconsidered at petitioner's January 21, 2020 interview. Exhibit 4.

8. It is well settled that an inmate's reappearance before the Parole Board renders academic any judicial appeal that may be pending with respect to the prior interview as well as the subsequent Article 78 proceeding. Matter of Faison v. Russi, 240 A.D.2d 822 (3d Dept. 1997) *lv to app. den.* 91 N.Y.2d 802(1997); Rentz v Herbert, 615 N.Y.S.2d 178, 179 (4<sup>th</sup> Dept 1994), *lv to app. den.* 84 N.Y.2d 810 (1994); Guzman v Chairman, New York State Division of Parole, 260 A.D.2d 735 (3d Dept 1999), *lv to app. den.* 93 N.Y.2d 812 (1999); Lee v New York State Division of Parole, 15 A.D.3d 705 (3d Dept 2005); Thompson v Department of Corrections and Community Supervision, 140 A.D.3d 1516 (3d Dept. 2016); Flanders v New York State Division of Parole, 14 A.D.3d 703 (2d Dept. 2005); Siao-Pao v New York State Board of Parole, 29 A.D.3d 353 (1<sup>st</sup> Dept. 2006); Oberoi v Yelich, 60 A.D.3d 708 (3d Dept. 2009) *lv.den.* 13 N.Y.3d 708; Orama v New York State Division of Parole, 65 A.D.3d 1406 (3d Dept. 2009); Matter of Johnson v New York State

Division of Parole, 54 A.D.3d 464 (2008) lv. den. 11 N.Y.3d 711 (2008); Haynes v Alexander, 66 A.D.3d 1348 (4<sup>th</sup> Dept. 2009); Marcelin v Evans, 86 A.D.3d 880 (3d Dept. 2011); Tafari v Evans, 92 A.D.3d 1060 (3d Dept. 2012) lv.app.den. 19 N.Y.3d 302 (2012); Burr v Chairperson, Appeals Unit, Division of Parole, 98 A.D.3d 1178 (3d Dept. 2012); Rodriguez v Evans, 98 A.D.3d 1214 (3d Dept. 2012); Robles v Evans, 100 A.D.3d 1455 (4<sup>th</sup> Dept. 2012); Abreu v State of New York, Board of Parole, 101 A.D.3d 1214 (3d Dept. 2012); Lopez v Evans, 102 A.D.3d 1029 (3d Dept. 2013); Hamilton v New York State Division of Parole, 101 A.D.3d 1549 (3d Dept. 2013); Charlemagne v Evans, 104 A.D.3d 1012 (3d Dept. 2013); Cruz v New York State Board of Parole, 109 A.D.3d 1033 (3d Dept. 2013); Suarez v Fischer, 112 A.D.3d 1344 (4<sup>th</sup> Dept. 2013); Jackson v New York State Division of Parole, 116 A.D.3d 1308 (3d Dept. 2014); Hardwick v New York State Department of Parole, 116 A.D.3d 1332 (3d Dept. 2014); Congelosi v Department of Corrections and Community Supervision, 120 A.D.3d 874 (3d Dept. 2014); Franko v Department of Corrections and Community Supervision, Board of Parole, 126 A.D.3d 1193 (3d Dept. 2015); Lopez v Stanford, 144 A.D.3d 1307 (3d Dept. 2016); Molina v Annucci, 162 A.D.3d 774 (2d Dept. 2018).

9. Petitioner mistakenly relies on Abrams v. Stanford, 150 AD3d 846, 847 (2<sup>nd</sup> Dept. 2017) to support his assertion that the mootness doctrine does not apply. There, the petitioner did not challenge the denial of general release to parole but instead the rescission of a previous grant of conditional parole for deportation only. Here, petitioner is in fact challenging the denial of release to parole made in July 2019. As petitioner's release was again considered in January 2020, the present action is rendered moot.

WHEREFORE, Respondent requests that the motion be granted and the petition be dismissed, together with such other and further relief as may be just and proper.

DATED: Poughkeepsie, New York  
July 28, 2020

/s/ Elizabeth A. Gavin  
ELIZABETH A. GAVIN  
Assistant Attorney General