

Fordham Law School

## FLASH: The Fordham Law Archive of Scholarship and History

---

Art. 78 Responses

Court Litigation Documents

---

November 2019

### Art. 78 Response - FUSL000032 (2013-07-16)

Follow this and additional works at: [https://ir.lawnet.fordham.edu/art78\\_response](https://ir.lawnet.fordham.edu/art78_response)

---

#### Recommended Citation

"Art. 78 Response - FUSL000032 (2013-07-16)" (2019). Parole Information Project  
[https://ir.lawnet.fordham.edu/art78\\_response/6](https://ir.lawnet.fordham.edu/art78_response/6)

This Parole Document is brought to you for free and open access by the Court Litigation Documents at FLASH: The Fordham Law Archive of Scholarship and History. It has been accepted for inclusion in Art. 78 Responses by an authorized administrator of FLASH: The Fordham Law Archive of Scholarship and History. For more information, please contact [tmelnick@law.fordham.edu](mailto:tmelnick@law.fordham.edu).

STATE OF NEW YORK  
COUNTY COURT

COUNTY OF COLUMBIA

In the Matter of the Application of  
[REDACTED],

Petitioner,

AFFIRMATION

Index No. [REDACTED]

-against-

NEW YORK STATE DEPARTMENT OF  
CORRECTIONS AND COMMUNITY SUPERVISION  
And NEW YORK STATE BOARD OF PAROLE.

Respondent.

For a Judgment Pursuant to Article 78  
of the Civil Practice Laws and Rules.

I, TERRENCE X. TRACY, hereby affirm under the penalty of perjury:

1. I am employed by the New York State Department of Corrections and Community Supervision (hereinafter "DOCCS") and serve as Counsel to the Board of Parole, an entity within DOCCS. I am familiar with the transactions and occurrences that are the subject of this proceeding and submit this affirmation in response to the petition which seeks relief pursuant to Article 78 of the New York Civil Practice Laws and Rules.

2. In this proceeding, the petitioner seeks judicial review of a decision of the Parole Board made following its *de novo* release interview with the petitioner on January 18, 2012. See Petition at ¶5, see also Exhibits G, H and I annexed to the Petition. For the reasons which follow, the respondent maintains that petitioner's ability to seek judicial review of the complained of Parole Board decision has been rendered moot, and accordingly, the Petition should be dismissed in its entirety.

hereto. Following the Board's interview with the petitioner, it determined that his release to parole was not appropriate. See Exhibit A annexed hereto.

7. The petitioner is presently pursuing his administrative appellate remedies in order to challenge the Board's most recent decision of April 10, 2013 denying him parole, and his attorney, the same attorney who appears on his behalf in this proceeding, has until September 4, 2013 to perfect the appeal from that decision. See Exhibit C annexed hereto. Accordingly, an administrative appeal from the Parole Board's most recent decision denying petitioner parole is pending at this time.

8. It is beyond cavil that the petitioner's reappearance before the Board in April 2013 and its rendering a decision following that appearance that is now the subject of a pending administrative appeal renders moot any challenges he may have to the January 2012 *de novo* interview. Matter of Boney v. State, 100 A.D.3d 1235 (3d Dept. 2012), *lv. denied*, 20 N.Y.3d 860 (2013); Matter of Ellison v. Evans, 100 A.D.2d 1159 (3d Dept. 2012); Matter of Tafari v. Evans, 92 A.D.3d 1060 (3d Dept. 2012) (“*given that petitioner has received all the relief to which he is entitled, the petition was properly dismissed*”); Matter of Ortiz v. Alexander, 83 A.D.3d 1078 (2d Dept. 2011) (“*Where, pending a determination of a proceeding pursuant to CPLR article 78 to review a denial of release to parole, a petitioner receives a subsequent, de novo parole hearing, after which the New York State Board of Parole [] denies release, an appeal with respect to the prior denial is rendered academic, since the petitioner is 'being held pursuant to the subsequent determination'*”); Matter of Borcsok v. New York State Board of Parole, 76 A.D.3d 1167 (3d Dept. 2010); Matter of Brown v. New York State Board of Parole, 72 A.D.3d 1375 (3d Dept. 2010) (“*Petitioner's reappearance before the Board... rendered his challenge to its prior determination moot as petitioner received all the relief to which he was entitled.*”); Matter of

3. On March 16, 2011, approximately 15 days prior to the merger of the former Division of Parole and Department of Correctional Services, (see Chapter 62 of the Laws of 2011, Part C, subpart A), the petitioner made his initial appearance before the Parole Board for the purpose of being considered for possible discretionary release to parole. See Exhibit C annexed to the Petition. Following the Board's decision denying petitioner release to parole (see Exhibits C and D to the Petition) he pursued his administrative appellate remedies. See Executive Law §259-i(4); 9 N.Y.C.R.R. Part 8006.

4. By a decision of the Parole Board dated November 8, 2011, the Board's decision of March 16, 2011 was administratively reversed so that the petitioner could be afforded a de novo interview. See Exhibit F to the Petition. The basis for the *de novo* interview was the Board's failure to use the correct standard under Correction Law §805 when assessing the appropriateness of petitioner's release.

5. On January 18, 2012, the petitioner was afforded his *de novo* interview to replace the interview he was afforded on March 16, 2011. See Exhibit G annexed to the Petition. Again, the petitioner was denied parole, (see Exhibits G and H), and again, he pursued his administrative appellate remedies. By its decision dated March 6, 2013, the Parole Board administratively affirmed the decision rendered after the January 18, 2012 *de novo* release interview. See Exhibit I annexed hereto.

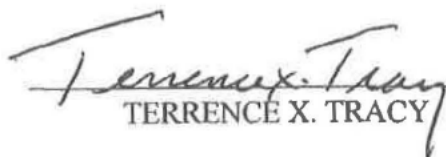
6. On April 10, 2013, the petitioner reappeared before the Parole Board in the normal course to be reconsidered for possible release to parole. See Exhibit A annexed hereto. Department staff prepared a COMPAS Re-Entry Risk Assessment for the Board's consideration in connection with the petitioner's discretionary release consideration. See Exhibit B annexed

LaSalle v. New York State Division of Parole, 52 A.D.3d 1071 (3d Dept. 2008); Matter of McAllister v. New York State Division of Parole, 28 A.D.3d 1046 (3d Dept. 2006), lv. denied, 7 N.Y.3d 715 (2006); Matter of Graziano v. Travis, 21 A.D.3d 1174 (3d Dept. 2005); Baez v. Travis, 10 A.D.3d 778 (3d Dept. 2004); Siao-Pao v. Travis, 5 A.D.3d 150 (1<sup>st</sup> Dept. 2004); Matter of Lorenzo v. Travis, 11 A.D.3d 833 (3d Dept. 2004); Boddie v. New York State Div. of Parole, 306 A.D.2d 661(3d Dept. 2003); Foster v. Travis, 306 A.D.2d 583 (3d Dept. 2003).

9. With the petitioner having reappeared before the Board in April 2013 for an entirely new release consideration and an administrative appeal now pending in connection with that appearance and the attendant decision, his challenges interposed this proceeding to the Parole Board's decision of January 18, 2012 denying him parole should be dismissed as moot.

WHEREFORE, it is respectfully requested that the petition be dismissed.

Dated: July 16, 2013  
Albany, New York

  
TERRENCE X. TRACY