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Decisions in Art. 78 Proceedings

Article 78 Litigation Documents

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### Decision in Art. 78 proceeding - Torturica, Richard (2022-03-28)

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At a Special Term of the Albany County  
Supreme Court, held in and for the County  
of Albany, in the City of Albany, New York,  
on the 25<sup>th</sup> day of March 2022

PRESENT: HON. PATRICK J. McGRATH,  
Justice of the Supreme Court

SUPREME COURT STATE OF NEW YORK  
COUNTY OF ALBANY

In the Matter of the Application of  
**RICHARD TORTURICA,**

Petitioner,

For a Judgment Pursuant to Article 78 of the Civil  
Practice Law and Rules,

-against-

**TINA M. STANFORD, CHAIRWOMAN OF THE NEW  
YORK STATE BOARD OF PAROLE,**

Respondent.

DECISION AND ORDER  
Index No. 908699-21

APPEARANCES: PATTERSON BELKNAP WEBB & TYLER LLP  
(Ariel Rudofsky, Esq.)  
Attorneys for the Petitioner

HON. LETITIA JAMES  
Attorney General of the State of New York  
(Jonathan S. Reiner, Esq., Assistant Attorney General)  
Attorney for the Respondent

McGRATH, PATRICK J., J.S.C.

Petitioner is an inmate in the custody of the Department of Corrections and Community Supervision ("DOCCS") and brings the instant proceeding pursuant to CPLR Article 78 challenging respondents' determination denying him discretionary release to parole. Respondent moves to dismiss and there is no objection to the motion.

Respondent moves to dismiss the instant petition, arguing that this matter is moot because

the petitioner reappeared for a parole board release interview on February 22, 2022, wherein petitioner was authorized for release from custody, effective April 27, 2022. Respondent argues that the decision to release petitioner provides him all relief requested in the petition. Response further argues that petitioner's reinterview renders petitioner's challenge to the original parole board decision moot.

Where a determination of an administrative body is challenged and the conduct ceases to affect petitioner before his claim has been determined, the Court is deprived of an actual controversy, and the petition will be dismissed as moot (*see Matter of Hearst Corp. v Clyne*, 50 NY2d 707, 713-14 [1980]; *see also Schermerhorn v Becker*, 64 AD3d 843 [3d Dept 2009]). Moreover, a challenge to a denial of parole will be rendered moot if a petitioner subsequently appears before the parole board (*see Matter of Adger v Department of Corr. & Community Supervision*, 181 AD3d 1120, 1120-1121 [3d Dept 2020]; *Matter of Muggelberg v N.Y. State Bd. of Parole*, 167 AD3d 1181, 1181 [3d Dept 2018]). The Court agrees that there is no longer any controversy before this Court affecting petitioner's rights or interest since the petitioner reappeared before the parole board and the decision to release petitioner provides him all relief requested in the petition.

In accordance with the foregoing, it is hereby


**ORDERED AND ADJUDGED**, that the petition is dismissed.

This shall constitute the Decision, Order and Judgment of the Court, the original of which is being uploaded to NYSCEF for electronic entry by the County Clerk's Office. Counsel for the respondent is not relieved from the applicable provisions of CPLR 2220 and § 202.5-b (h) (2) of the Uniform Rules of Supreme and County Courts insofar as they relate to service and notice of entry of the filed document upon all other parties to the action/proceeding, whether accomplished by mailing or electronic means, whichever may be appropriate dependent upon the filing status of the party.

**ENTER.**

Dated: March 28, 2022  
Albany, New York

  
PATRICK J. McGRATH  
Supreme Court Justice



**Papers Considered:**

1. NYSCEF Documents: 1-15, 32-33.

03/29/2022