

SUPREME COURT OF THE STATE OF NEW YORK
Appellate Division, Fourth Judicial Department

689

KAH 07-02238

PRESENT: SCUDDER, P.J., HURLBUTT, PERADOTTO, GREEN, AND GORSKI, JJ.

THE PEOPLE OF THE STATE OF NEW YORK EX REL.
ERVIN MITCHELL, PETITIONER-APPELLANT,

V

MEMORANDUM AND ORDER

DAVID UNGER, SUPERINTENDENT, ORLEANS
CORRECTIONAL FACILITY, RESPONDENT-RESPONDENT.

TULLY RINCKEY PLLC, ALBANY (KILEY D. SCOTT OF COUNSEL), FOR
PETITIONER-APPELLANT.

ANDREW M. CUOMO, ATTORNEY GENERAL, ALBANY (FRANK K. WALSH OF COUNSEL),
FOR RESPONDENT-RESPONDENT.

Appeal from a judgment (denominated order) of the Supreme Court, Orleans County (James P. Punch, A.J.), entered September 28, 2007 in a habeas corpus proceeding. The judgment dismissed the petition.

It is hereby ORDERED that said appeal is unanimously dismissed without costs.

Memorandum: This appeal by petitioner from a judgment dismissing his petition seeking a writ of habeas corpus has been rendered moot by his release to parole supervision (*see People ex rel. Hampton v Dennison*, 59 AD3d 951), and the exception to the mootness doctrine does not apply herein (*see id.*).

Entered: June 5, 2009

Patricia L. Morgan
Clerk of the Court