

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

1334

CA 08-01914

PRESENT: MARTOCHE, J.P., SMITH, PERADOTTO, GREEN, AND PINE, JJ.

IN THE MATTER OF CURT GUTHRIE,
PETITIONER-APPELLANT,

V

ORDER

JAMES L. BERBARY, SUPERINTENDENT, COLLINS
CORRECTIONAL FACILITY, ET AL.,
RESPONDENTS-RESPONDENTS.

ALAN BIRNHOLZ, EAST AMHERST, FOR PETITIONER-APPELLANT.

ANDREW M. CUOMO, ATTORNEY GENERAL, ALBANY (MARLENE O. TUCZINSKI OF
COUNSEL), FOR RESPONDENTS-RESPONDENTS.

Appeal from a judgment (denominated order) of the Supreme Court,
Erie County (Russell P. Buscaglia, A.J.), entered August 19, 2008 in a
proceeding pursuant to CPLR article 78. The judgment dismissed the
petition.

It is hereby ORDERED that said appeal is unanimously dismissed
without costs as moot (*see Matter of Moissett v Travis*, 97 NY2d 673;
see also Matter of Schwartz v Dennison, 40 AD3d 218).

Entered: November 13, 2009

Patricia L. Morgan
Clerk of the Court