

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

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**KAH 09-01010**

PRESENT: SMITH, J.P., FAHEY, CARNI, SCONIERS, AND MARTOCHE, JJ.

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THE PEOPLE OF THE STATE OF NEW YORK EX REL.  
JOHN D. VANILLE, PETITIONER-RESPONDENT,

V

MEMORANDUM AND ORDER

SUPERINTENDENT, ORLEANS CORRECTIONAL FACILITY,  
NEW YORK STATE DEPARTMENT OF CORRECTIONAL  
SERVICES, NEW YORK STATE DIVISION OF PAROLE  
AND NEW YORK STATE ATTORNEY GENERAL,  
RESPONDENTS-APPELLANTS.  
(APPEAL NO. 2.)

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ANDREW M. CUOMO, ATTORNEY GENERAL, ALBANY (FRANK BRADY OF COUNSEL),  
FOR RESPONDENTS-APPELLANTS.

EMMETT J. CREAHAN, DIRECTOR, MENTAL HYGIENE LEGAL SERVICE, BUFFALO  
(VICKY L. VALVO OF COUNSEL), FOR PETITIONER-RESPONDENT.

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Appeal from a judgment of the Supreme Court, Orleans County  
(Tracey A. Bannister, J.), entered May 8, 2009 in a proceeding  
pursuant to CPLR article 70. The judgment granted the petition for a  
writ of habeas corpus and discharged petitioner from the custody of  
respondents.

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

Memorandum: Respondents appeal from a judgment granting the  
petition seeking a writ of habeas corpus with respect to petitioner's  
civil commitment pursuant to Mental Hygiene Law article 10. We  
conclude that the appeal must be dismissed as moot. Here, there is no  
pending action that would provide a legal basis upon which petitioner  
may be detained, and thus "the rights of the parties cannot be  
affected by the determination of this appeal" (*Matter of Hearst Corp.*  
*v Clyne*, 50 NY2d 707, 714; see generally *People ex rel. Hampton v*  
*Dennison*, 59 AD3d 951, lv denied 12 NY3d 711; *People ex rel. Cook v*  
*Leonardo*, 271 AD2d 773). We further conclude that this appeal does  
not fall within the exception to the mootness doctrine (see generally  
*Hearst*, 50 NY2d at 714-715).

Entered: March 25, 2011

Patricia L. Morgan  
Clerk of the Court