

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

1218

**KAH 12-02067**

PRESENT: SCUDDER, P.J., CENTRA, LINDLEY, SCONIERS, AND VALENTINO, JJ.

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THE PEOPLE OF THE STATE OF NEW YORK EX REL.  
UNIQUE SMITH, PETITIONER-APPELLANT,

V

MEMORANDUM AND ORDER

MALCOLM R. CULLY, SUPERINTENDENT, COLLINS  
CORRECTIONAL FACILITY AND ANDREA W. EVANS,  
CHAIRWOMAN, NEW YORK STATE DIVISION OF PAROLE,  
RESPONDENTS-RESPONDENTS.

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CHARLES J. GREENBERG, AMHERST, FOR PETITIONER-APPELLANT.

ERIC T. SCHNEIDERMAN, ATTORNEY GENERAL, ALBANY (OWEN DEMUTH OF  
COUNSEL), FOR RESPONDENTS-RESPONDENTS.

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Appeal from a judgment (denominated decision and order) of the Supreme Court, Erie County (John L. Michalski, A.J.), dated August 6, 2012 in a habeas corpus proceeding. The judgment dismissed the petition.

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

Memorandum: Petitioner's appeal from the judgment dismissing his petition for a writ of habeas corpus has been rendered moot by his release from custody upon reaching his maximum expiration date (see *People ex rel. Baron v New York State Dept. of Corrections*, 94 AD3d 1410, 1410, lv denied 19 NY3d 807; *People ex rel. Kendricks v Smith*, 52 AD2d 1090, 1090). Contrary to petitioner's contention, the exception to the mootness doctrine does not apply, inasmuch as the alleged error he identifies on appeal is not likely to recur, the alleged error is not one typically evading review, and the appeal does not involve any substantial or novel issues (see generally *Matter of Hearst Corp. v Clyne*, 50 NY2d 707, 714-715).

Entered: December 27, 2013

Frances E. Cafarell  
Clerk of the Court