

Supreme Court of the State of New York
Appellate Division: Second Judicial Department

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_____AD3d_____

Submitted - January 29, 2009

REINALDO E. RIVERA, J.P.
MARK C. DILLON
JOHN M. LEVENTHAL
CHERYL E. CHAMBERS, JJ.

2008-02819

DECISION & ORDER

The People, etc., ex rel. Edward Patterson, appellant,
v Robert Ercole, etc., et al., respondents.

(Index No. 303/08)

Edward Patterson, Stormville, N.Y., appellant pro se.

In a habeas corpus proceeding, the petitioner appeals from a judgment of the Supreme Court, Dutchess County (Dolan, J.), dated January 31, 2008, which, without a hearing, denied the petition and dismissed the proceeding.

ORDERED that the judgment is affirmed, without costs or disbursements.

The appellant's contention that a federal detention warrant compelling him to remain in custody has lapsed is based upon material de hors the record (*see People ex rel. Roache v Connell*, 31 AD3d 1199). Moreover, habeas corpus is an inappropriate remedy for addressing the appellant's other contention that a good time allowance was improperly withheld from him (*see People ex rel. Barnes v Allard*, 25 AD3d 893, 894; *People ex rel. Richardson v West*, 24 AD3d 996, 997). Accordingly, the appellant failed to establish that he would be entitled to an immediate release from custody if a writ of habeas corpus were granted (*see People ex rel. Kaplan v Commissioner of Correction of City of N.Y.*, 60 NY2d 648; *People ex rel. DeFlumer v Strack*, 212 AD2d 555).

RIVERA, J.P., DILLON, LEVENTHAL and CHAMBERS, JJ., concur.

ENTER:



James Edward Pelzer
Clerk of the Court

March 3, 2009

PEOPLE EX REL. PATTERSON v ERCOLE