

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

D23874
W/kmg

_____AD3d_____

Submitted - June 4, 2009

ROBERT A. SPOLZINO, J.P.
DANIEL D. ANGIOLILLO
CHERYL E. CHAMBERS
PLUMMER E. LOTT, JJ.

2007-11252

DECISION & ORDER

The People, etc., ex rel. Carl Dushain, appellant,
v Robert E. Ercole, etc., respondent.

(Index No. 5157/07)

Carl Dushain, Stormville, N.Y., appellant pro se.

Robert M. Morgenthau, District Attorney, New York, N.Y. (Eleanor J. Ostrow of
counsel), for respondent.

In a habeas corpus proceeding pursuant to CPLR article 70, the petitioner appeals from a judgment of the Supreme Court, Dutchess County (Brands, J.), dated November 7, 2007, which, without a hearing, denied the petition and dismissed the proceeding.

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

A writ of habeas corpus may not be used for review of issues that have been, or could have been, reviewed on direct appeal or by a postjudgment motion addressed to the court in which an underlying judgment of conviction was rendered (*see People ex rel. Almeyda v Schultz*, 18 AD3d 582; *People ex rel. Barnes v Fischer*, 303 AD2d 526; *People ex rel. Pearson v Garvin*, 211 AD2d 690, 691; *People ex rel. Moore v Scully*, 189 AD2d 845; *People ex rel. Benbow v Scully*, 189 AD2d 844). The allegations in the petition do not warrant departure from traditional orderly procedure (*see People ex rel. Keitt v McMann*, 18 NY2d 257, 262; *see also* CPL 210.30[6]).

SPOLZINO, J.P., ANGIOLILLO, CHAMBERS and LOTT, JJ., concur.

ENTER:


James Edward Pelzer

July 14, 2009

PEOPLE EX REL. DUSHAIN v ERCOLE

Clerk of the Court

July 14, 2009

PEOPLE EX REL. DUSHAIN v ERCOLE