

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

D25211
G/kmg

_____AD3d_____

Submitted - November 2, 2009

MARK C. DILLON, J.P.
ANITA R. FLORIO
HOWARD MILLER
DANIEL D. ANGIOLILLO, JJ.

2008-10810

DECISION & ORDER

The People, etc., ex rel. Khalil Abdul-Aziz, f/k/a
Robert Collins, appellant, v Luis R. Marshall, etc.,
respondent.

(Index No. 08-04095)

Khalil Abdul-Aziz, f/k/a Robert Collins, Ossining, N.Y., appellant pro se.

Andrew M. Cuomo, Attorney General, New York, N.Y. (Michael S. Belohlavek and
Laura R. Johnson of counsel), for respondent.

In a proceeding pursuant to CPLR article 70 for a writ of habeas corpus, the petitioner
appeals from a judgment of the Supreme Court, Westchester County (Cohen, J.), entered September
30, 2008, 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” (*People ex rel. Dushain v Ercole*, 64 AD3d 669,
669; see *People ex rel. Barnes v Fischer*, 303 AD2d 526). “Further, where, as here, a petitioner
presents no fundamental constitutional or statutory claim that was not already reviewed on direct
appeal or on his CPL 440.10 motion and would warrant departure from traditional, orderly process
the petition is procedurally barred” (*People ex rel. Almeyda v Schultz*, 18 AD3d 582, 582-583

December 8, 2009

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[internal quotation marks omitted]). Therefore, the Supreme Court properly denied the petition and dismissed the proceeding without conducting a hearing.

DILLON, J.P., FLORIO, MILLER and ANGIOLILLO, JJ., concur.

ENTER:

A handwritten signature in black ink, reading "James Edward Pelzer". The signature is written in a cursive, flowing style with a large initial "J".

James Edward Pelzer
Clerk of the Court