

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

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KAH 13-01870

PRESENT: SCUDDER, P.J., SMITH, VALENTINO, WHALEN, AND DEJOSEPH, JJ.

THE PEOPLE OF THE STATE OF NEW YORK EX REL.
TOMMY JACKSON, PETITIONER-APPELLANT,

V

MEMORANDUM AND ORDER

NEW YORK STATE DEPARTMENT OF CORRECTIONS AND
COMMUNITY SUPERVISION, RESPONDENT-RESPONDENT.

WYOMING COUNTY-ATTICA LEGAL AID BUREAU, WARSAW (NORMAN P. EFFMAN OF
COUNSEL), FOR PETITIONER-APPELLANT.

TOMMY JACKSON, PETITIONER-APPELLANT PRO SE.

Appeal from a judgment (denominated order) of the Supreme Court, Wyoming County (Mark H. Dadd, A.J.), dated September 9, 2013 in a habeas corpus proceeding. The judgment denied the petition.

It is hereby ORDERED that the judgment so appealed from is unanimously affirmed without costs.

Memorandum: Petitioner commenced this proceeding pursuant to CPLR article 70 seeking habeas corpus relief. Petitioner alleged that his imprisonment is unlawful on the grounds that the persistent felony offender statutes (Penal Law § 70.10; CPL 400.20) violate the United States and New York State Constitutions, and that he was denied effective assistance of counsel with respect to a prior conviction. As a preliminary matter, we note that petitioner's challenge to the constitutionality of the statutes was made without the requisite notice to the Attorney General (*see People v Korber*, 89 AD3d 1543, 1543-1544, *lv denied* 19 NY3d 864). In any event, Supreme Court properly denied the petition without a hearing. The allegations raised in the petition either have been, or could have been, raised in prior appeals or in motions pursuant to CPL article 440 (*see People v Jackson*, 119 AD3d 1346, 1347; *People v Jackson*, 71 AD3d 1457, 1458, *lv dismissed in part and denied in part* 17 NY3d 774; *People v Jackson*, 262 AD2d 1031, 1031-1032, *lv denied* 94 NY2d 881). Thus, habeas corpus relief is not available (*see People ex rel. Tuszyński v Stallone*, 117 AD3d 1472, 1472, *lv denied* 23 NY3d 908; *People ex rel. Lanfair v Corcoran*, 60 AD3d 1351, 1351, *lv denied* 12 NY3d 714).

Entered: February 6, 2015

Frances E. Cafarell
Clerk of the Court