

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

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KAH 14-01643

PRESENT: SCUDDER, P.J., SMITH, CENTRA, PERADOTTO, AND CARNI, JJ.

THE PEOPLE OF THE STATE OF NEW YORK EX REL.
JUNIOR COLLINS, PETITIONER-APPELLANT,

V

MEMORANDUM AND ORDER

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

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

Appeal from a judgment (denominated order) of the Supreme Court, Wyoming County (Michael M. Mohun, A.J.), dated May 12, 2014 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 seeking a writ of habeas corpus, contending that he was improperly sentenced as a persistent violent felony offender. We conclude that Supreme Court properly denied the petition. "Habeas corpus relief is unavailable where[, as here,] a claim could have been raised on direct appeal or in a CPL article 440 motion" (*People ex rel. Tislon v Rock*, 84 AD3d 1606, 1607, *lv denied* 17 NY3d 712; *see Matter of Caroselli v Goord*, 269 AD2d 706, 706, *lv denied* 95 NY2d 754). Indeed, we note that petitioner's contention was in fact raised and rejected on a prior CPL article 440 motion.

Entered: October 2, 2015

Frances E. Cafarell
Clerk of the Court