

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

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KAH 09-00045

PRESENT: SMITH, J.P., LINDLEY, SCONIERS, PINE, AND GORSKI, JJ.

THE PEOPLE OF THE STATE OF NEW YORK EX REL.
ARCHIE SHANNON, PETITIONER-APPELLANT,

V

MEMORANDUM AND ORDER

SIBATU KHAHAIFA, SUPERINTENDENT, ORLEANS
CORRECTIONAL FACILITY, AND GEORGE B. ALEXANDER,
COMMISSIONER, NEW YORK STATE DIVISION OF PAROLE,
RESPONDENTS-RESPONDENTS.

D.J. & J.A. CIRANDO, ESQS., SYRACUSE (BRADLEY E. KEEM OF COUNSEL), FOR
PETITIONER-APPELLANT.

ANDREW M. CUOMO, ATTORNEY GENERAL, ALBANY (MARLENE O. TUCZINSKI OF
COUNSEL), FOR RESPONDENTS-RESPONDENTS.

Appeal from a judgment (denominated order) of the Supreme Court, Orleans County (James P. Punch, A.J.), entered August 13, 2008. The judgment denied the petition for a writ of habeas corpus.

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 on the grounds that, inter alia, the determination that he violated a condition of his parole was arbitrary and capricious, and the time assessment for the violation was excessive. We conclude that Supreme Court properly denied the petition.

Contrary to the contention of petitioner, the evidence adduced at the final parole revocation hearing "was sufficient to prove by a preponderance of the evidence that [he] violated a condition of parole" (*People ex rel. Peters v Walker*, 262 AD2d 1025, lv denied 93 NY2d 819). "While petitioner also seeks to challenge the length of his time assessment, habeas corpus relief is not appropriate because, even if his contention[] ha[s] merit, he would not be entitled to immediate release from prison" (*People ex rel. Muhammad v Bradt*, 68 AD3d 1391, 1392; see *People ex rel. Leggett v Leonardo*, 274 AD2d 699). For the same reason, we conclude that habeas corpus relief is not appropriate based on the contention of petitioner that he was denied effective assistance of counsel at the final parole revocation hearing (see *People ex rel. Santoro v Hollins*, 273 AD2d 829; *People ex rel. Kinzer v Williams*, 256 AD2d 1240; see generally *People ex rel. Douglas v Vincent*, 50 NY2d 901, 903). "Although this Court has the power to

convert a habeas corpus proceeding into a CPLR article 78 proceeding . . . , we decline to do so because we do not consider it appropriate on this record" (*People ex rel. Brown v McCoy*, 266 AD2d 805, lv denied 94 NY2d 760).

Entered: June 11, 2010

Patricia L. Morgan
Clerk of the Court