

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

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**KAH 08-00868**

PRESENT: MARTOCHE, J.P., SMITH, CENTRA, FAHEY, AND PINE, JJ.

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THE PEOPLE OF THE STATE OF NEW YORK EX REL.  
CHARLES W. WAID, PETITIONER-APPELLANT,

V

MEMORANDUM AND ORDER

JOHN LEMPKE, SUPERINTENDENT, FIVE POINTS  
CORRECTIONAL FACILITY, RESPONDENT-RESPONDENT.

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CHARLES J. GREENBERG, BUFFALO, FOR PETITIONER-APPELLANT.

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Appeal from a judgment (denominated order) of the Supreme Court, Seneca County (Dennis F. Bender, A.J.), entered February 28, 2008 in a proceeding pursuant to CPLR article 70. 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: We agree with the reasoning of Supreme Court in determining that petitioner is not entitled to habeas corpus relief. We add only that petitioner has not addressed the issue whether he exhausted his administrative remedies before seeking a writ of habeas corpus, and the record does not enable us to discern whether he in fact did so. Even assuming, arguendo, that petitioner exhausted his administrative remedies, we nevertheless conclude that he is not entitled to the relief sought because the period of his reincarceration is authorized by Penal Law § 70.45 (1).

Entered: April 24, 2009

Patricia L. Morgan  
Deputy Clerk of the Court