

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

1474

KAH 09-00208

PRESENT: SCUDDER, P.J., SMITH, PERADOTTO, GREEN, AND GORSKI, JJ.

THE PEOPLE OF THE STATE OF NEW YORK EX REL.
MICHAEL ROBINSON, PETITIONER-APPELLANT,

V

MEMORANDUM AND ORDER

HAROLD GRAHAM, SUPERINTENDENT, AUBURN
CORRECTIONAL FACILITY, RESPONDENT-RESPONDENT.

CHARLES A. MARANGOLA, MORAVIA, FOR PETITIONER-APPELLANT.

ANDREW M. CUOMO, ATTORNEY GENERAL, ALBANY (KATE H. NEPVEU OF COUNSEL),
FOR RESPONDENT-RESPONDENT.

Appeal from a judgment (denominated order) of the Supreme Court, Cayuga County (Thomas G. Leone, A.J.), entered October 29, 2008. The judgment dismissed the petition for a writ of habeas corpus.

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

Memorandum: Supreme Court properly dismissed the petition for a writ of habeas corpus. "The contention of petitioner that he is entitled to immediate release because the indictment was jurisdictionally defective could have been raised on direct appeal or by way of a CPL article 440 motion, and thus habeas corpus relief does not lie" (*People ex rel. Lewis v Graham*, 57 AD3d 1508, 1508-1509, lv denied 12 NY3d 705). Petitioner's remaining contentions also could have been raised on direct appeal or by way of a CPL article 440 motion, and thus habeas corpus relief is unavailable (*see generally People ex rel. Lanfair v Corcoran*, 60 AD3d 1351, lv denied 12 NY3d 714; *People ex rel. Mills v Poole*, 55 AD3d 1289, lv denied 11 NY3d 712).

Entered: December 30, 2009

Patricia L. Morgan
Clerk of the Court