

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

1051

**KAH 11-02306**

PRESENT: SCUDDER, P.J., SMITH, FAHEY, LINDLEY, AND MARTOCHE, JJ.

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THE PEOPLE OF THE STATE OF NEW YORK EX REL.  
MANUEL MARTINEZ, PETITIONER-APPELLANT,

V

MEMORANDUM AND ORDER

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

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

ERIC T. SCHNEIDERMAN, ATTORNEY GENERAL, ALBANY (MARLENE O. TUCZINSKI  
OF COUNSEL), FOR RESPONDENT-RESPONDENT.

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Appeal from a judgment (denominated order) of the Supreme Court, Cayuga County (Mark H. Fandrich, A.J.), entered August 18, 2011 in a habeas corpus proceeding. The judgment dismissed the petition.

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

Memorandum: Supreme Court properly dismissed the petition in this habeas corpus proceeding. Petitioner sought that relief based on his contention that the court in which he was convicted lacked personal jurisdiction over him. "Habeas corpus relief is not an appropriate remedy for asserting claims that were or could have been raised on direct appeal or in a CPL article 440 motion, even if they are jurisdictional in nature . . . CPL 440.10 (1) (a) specifically authorizes a motion to vacate a judgment upon the ground that the court did not have jurisdiction of the defendant" (*People ex rel. Burr v Rock*, 93 AD3d 977, 977-978, *lv denied* 19 NY3d 806; see *People ex rel. Forsythe v Poole*, 56 AD3d 1239, 1239-1240, *lv denied* 12 NY3d 701; *People ex rel. Minter v Eisenschmidt*, 294 AD2d 939, 939-940, *lv denied* 98 NY2d 609).

Entered: September 28, 2012

Frances E. Cafarell  
Clerk of the Court