

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

**474**

**KAH 12-01264**

PRESENT: SMITH, J.P., PERADOTTO, CARNI, SCONIERS, AND VALENTINO, JJ.

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THE PEOPLE OF THE STATE OF NEW YORK EX REL.  
LEROY PEOPLES, PETITIONER-APPELLANT,

V

MEMORANDUM AND ORDER

NEW YORK STATE DEPARTMENT OF CORRECTIONAL  
SERVICES, RESPONDENT-RESPONDENT.

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ALAN BIRNHOLZ, EAST AMHERST, FOR PETITIONER-APPELLANT.

LEROY PEOPLES, PETITIONER-APPELLANT PRO SE.

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Appeal from a judgment of the Supreme Court, Wyoming County (Mark H. Dadd, A.J.), entered May 29, 2012 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 habeas corpus proceeding, contending that the statute of limitations had expired on some of the crimes charged in the indictment, Supreme Court lacked jurisdiction because of his age at the time some of his crimes were committed, and he was illegally extradited from Connecticut to New York. We conclude that Supreme Court properly denied the petition. "Habeas corpus relief is unavailable because petitioner's contention in support of the petition 'could have been, or [was], raised on direct appeal or by a motion pursuant to CPL article 440' " (*People ex rel. Lewis v Graham*, 96 AD3d 1423, 1423, lv denied 19 NY3d 813). We note, in any event, contrary to petitioner's contention, that he "failed to 'present factual issues that would entitle [him] to an evidentiary hearing' " (*People ex rel. Mitchell v Cully*, 63 AD3d 1679, 1679, lv denied 13 NY3d 708; see *People ex rel. Jackson v New York State Dept. of Correctional Servs.*, 253 AD2d 919, 919). Petitioner's remaining contentions are not properly before us because they are raised for the first time on appeal (see *People ex rel. Victory v Travis*, 288 AD2d 932, 934, lv denied 97 NY2d 611).

Entered: May 2, 2014

Frances E. Cafarell  
Clerk of the Court