

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

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**KAH 13-01517**

PRESENT: SCUDDER, P.J., FAHEY, PERADOTTO, CARNI, AND WHALEN, JJ.

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THE PEOPLE OF THE STATE OF NEW YORK EX REL.  
SHERMAN WALKER, PETITIONER-APPELLANT,

V

MEMORANDUM AND ORDER

MS. DOLCE, SUPERINTENDENT, NEW YORK STATE  
DEPARTMENT OF CORRECTIONS AND COMMUNITY  
SUPERVISION, RESPONDENT-RESPONDENT.

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

ERIC T. SCHNEIDERMAN, ATTORNEY GENERAL, ALBANY (ALLYSON B. LEVINE OF  
COUNSEL), FOR RESPONDENT-RESPONDENT.

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Appeal from a judgment (denominated order) of the Supreme Court,  
Orleans County (James P. Punch, A.J.), entered May 28, 2013 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: We reject the contention of petitioner that Supreme  
Court erred in dismissing his petition for a writ of habeas corpus.  
The remedy of habeas corpus is unavailable because petitioner would  
not be eligible for immediate release from custody in the event that  
he succeeded on the merits of the proceeding (*see People ex rel.*  
*Porter v Napoli*, 56 AD3d 830, 831; *see also People ex rel. Hinton v*  
*Graham*, 66 AD3d 1402, 1402, *lv denied* 13 NY3d 934, *rearg denied* 14  
NY3d 795). We note that, although this Court has the power to convert  
this proceeding into one pursuant to CPLR article 78 (*see People ex*  
*rel. Brown v New York State Div. of Parole*, 70 NY2d 391, 398), we deem  
such conversion to be inappropriate on the record before us. Finally,  
contrary to petitioner's contention, petitioner was afforded  
meaningful representation by the attorney assigned to represent him in  
connection with the habeas corpus proceeding (*see generally People v*  
*Stultz*, 2 NY3d 277, 287, *rearg denied* 3 NY3d 702; *People v Benevento*,  
91 NY2d 708, 712).

Entered: February 6, 2015

Frances E. Cafarell  
Clerk of the Court