

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

**1454**

**KAH 18-00046**

PRESENT: WHALEN, P.J., CENTRA, PERADOTTO, CURRAN, AND WINSLOW, JJ.

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THE PEOPLE OF THE STATE OF NEW YORK EX REL.  
VINCENT TORRES, PETITIONER-APPELLANT,

V

MEMORANDUM AND ORDER

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

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ADAM H. VANBUSKIRK, AUBURN, FOR PETITIONER-APPELLANT.

BARBARA D. UNDERWOOD, ATTORNEY GENERAL, ALBANY (MARTIN A. HOTVET 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 June 13, 2017 in a habeas corpus proceeding. The judgment, among other things, dismissed the petition.

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

Memorandum: Petitioner appeals from a judgment that, among other things, dismissed his habeas corpus petition. He contends that Supreme Court erred in denying him habeas corpus relief without an evidentiary hearing because he made a meritorious initial showing that he was arrested pursuant to an improper "John Doe" warrant that was not subsequently amended to include his name or a description of him. We reject that contention. Insofar as petitioner directs us to testimony in the record of his direct appeal (*People v Torres*, 129 AD3d 1535 [4th Dept 2015]), or information discovered through a Freedom of Information Law request, habeas corpus relief is not appropriate because he could have raised his contention on direct appeal or in a CPL article 440 motion (*see People ex rel. Frederick v Superintendent, Auburn Corr. Facility*, 156 AD3d 1468, 1468 [4th Dept 2017], *lv denied* 31 NY3d 908 [2018]; *People ex rel. Haddock v Dolce*, 149 AD3d 1593, 1593 [4th Dept 2017], *lv denied* 29 NY3d 917 [2017]; *see generally People v Rossborough*, 122 AD3d 1244, 1245 [4th Dept 2014]). We have considered petitioner's remaining arguments and conclude that they do not warrant modification or reversal of the judgment.

Entered: December 21, 2018

Mark W. Bennett  
Clerk of the Court