

<b>People ex rel Bailey v Yelich</b>
2017 NY Slip Op 30000(U)
January 4, 2017
Supreme Court, Franklin County
Docket Number: 16-778
Judge: S. Peter Feldstein
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**STATE OF NEW YORK  
SUPREME COURT**

**COUNTY OF FRANKLIN**

**X**

The People of the State of New York *ex rel*  
**TIMOTHY BAILEY, #11-R-1962,**  
Petitioner,

for Judgment Pursuant to Article 70  
of the Civil Practice Law and Rules

-against-

**BRUCE YELICH, Superintendent,**  
Bare Hill Correctional Facility,  
Respondent.

**DECISION, ORDER AND  
JUDGMENT**

**RJI #16-1-2016-0482.91**

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**X**

The Court has before it the Petition for a Writ of Habeas Corpus of Timothy Bailey, dated December 16, 2016 but verified December 14, 2016, and filed in the Franklin County Clerk's Office on December 22, 2016. Petitioner, who is an inmate at the Bare Hill Correctional Facility, purports to challenge his continued confinement in the custody of the New York State Department of Corrections and Community Supervision (hereinafter referred to as "DOCCS") based upon the purported lack of subject matter jurisdiction by the court of conviction. The papers before the Court will be considered as an *ex parte* request for the issuance of a writ of habeas corpus or order to show cause in a habeas corpus proceeding. For the reasons set forth below, however, the Court declines to issue such a writ or order.

On or about June 7, 2011, the petitioner was received into the custody of DOCCS to serve a sentence of thirteen (13) years determinate for the conviction of the crimes of Attempted Robbery in the Second Degree, a D felony, and Robbery in the First Degree, a B felony. Petitioner alleges he is entitled to immediate release because of the following:

“The cause of the petitioners (*sic*) custody is for a conviction by plea for the crime of Robbery - 1. The grounds for this petitioner are for the following: 1<sup>st</sup> ground, the court did not have subject matter jurisdiction of the case. 2<sup>nd</sup> ground, the court (the people) failed to inform the petitioner of the true nature and cause of the litigation. 3<sup>rd</sup> ground, the agent representing the petitioner was doing so with adverse interest (*sic*).”

In the petition currently before this Court petitioner sets forth various allegations of procedural errors at arraignment, trial and sentencing of his underlying conviction.<sup>1</sup> Habeas corpus relief is ordinarily unavailable where the issues sought to be raised in the habeas corpus proceeding have been, or could have been, raised on direct appeal or in the context of a CPL Article 440 motion. *See People ex rel Dixon v. Rock*, 79 AD3d 1518, *lv den* 16 NY3d 709, *People ex rel Joseph v. Napoli*, 75 AD3d 669, *lv den* 15 NY3d 711 and *People ex rel Barnes v. Allard*, 25 AD3d 893, *lv den* 6 NY3d 714. This holds true, moreover, even where the habeas corpus proceeding purports to raise a jurisdictional challenge. *See People ex rel Hemphill v. Rock*, 95 AD3d 1579, *People ex rel Franza v. Walsh*, 76 AD3d 1160, *lv den* 15 NY3d 716, *People ex rel Moore v. Connolly*, 56 AD3d 847, *lv den* 12 NY3d 701 and *People ex rel Alvarez v. West*, 22 AD3d 996, *lv den* 6 NY3d 704.

Although it is not entirely clear that each and every issue sought to be raised by petitioner in this proceeding was, in fact, raised in an omnibus motion to the trial court, on direct appeal or in the context of any CPL Article 440 motion, the Court perceives no reason why such issues could not have been so raised. This Court, moreover, finds nothing in the petition supporting a departure from traditional orderly procedure such as direct appeal or

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<sup>1</sup> The petitioner makes reference to the date of October 4, 2010, however, it appears that date may be the date of the alleged crime or indictment. The petitioner fails to include any definitive information to indicate when he entered the plea or was sentenced.

CPL Article 440 motion. *See Keitt v. McMann*, 18 NY2d 257, *People ex rel Hall v. Bradt*, 85 AD3d 1422 and *People ex rel Chapman v. LaClair*, 64 AD3d 1026, *lv den* 13 NY3d 712. Accordingly, the Court finds that the petition must be dismissed *sue sponte*. *See People ex rel Forsythe v. Poole*, 56 AD3d 1239, *lv den* 12 NY3d 701 and *People ex rel Smith v. Burge*, 11 AD3d 907, *lv den* 4 NY3d 701.

Based upon all of the above, it is, therefore, the decision of the Court and it is hereby **ORDERED AND ADJUDGED**, that petitioner's request for the issuance of a writ of habeas corpus or order to show cause in a habeas corpus proceeding is denied; and it is further

**ORDERED AND ADJUDGED**, that the petition is dismissed.

**Dated:** January 4, 2017 at  
Indian Lake, New York.

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S. Peter Feldstein  
Acting Supreme Court Justice