

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

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KAH 08-00831

PRESENT: SCUDDER, P.J., HURLBUTT, PERADOTTO, GREEN, AND GORSKI, JJ.

THE PEOPLE OF THE STATE OF NEW YORK EX REL.
GERALD A. LANFAIR, PETITIONER-APPELLANT,

V

MEMORANDUM AND ORDER

MICHAEL CORCORAN, SUPERINTENDENT, CAYUGA
CORRECTIONAL FACILITY, RESPONDENT-RESPONDENT.

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

GERALD A. LANFAIR, PETITIONER-APPELLANT PRO SE.

ANDREW M. CUOMO, ATTORNEY GENERAL, ALBANY (RAJIT S. DOSANJH OF
COUNSEL), FOR RESPONDENT-RESPONDENT.

Appeal from a judgment (denominated order) of the Supreme Court, Cayuga County (Mark H. Fandrich, A.J.), entered February 29, 2008 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: Petitioner commenced this proceeding seeking a writ of habeas corpus on the ground that the amended indictment underlying his conviction is jurisdictionally defective. Supreme Court properly dismissed the petition. Petitioner could have raised his challenge to the amended indictment on his direct appeal from the judgment of conviction or by way of a motion pursuant to CPL 440.10, and thus habeas corpus relief is not available (see *People ex rel. Curry v Girdich*, 290 AD2d 912, 913, lv denied 98 NY2d 602; *People ex rel. Gonzalez v Bennett*, 263 AD2d 565, lv denied 94 NY2d 753). Further, petitioner has shown no reason to justify a departure "from traditional orderly procedure" (*People ex rel. Brown v Commissioner of N.Y. State Dept. of Correctional Servs.*, 252 AD2d 602). The contention of petitioner in his pro se supplemental brief that he was denied effective assistance of appellate counsel on his direct appeal is not preserved for our review (see *People ex rel. Velez v Artus*, 49 AD3d 1109, 1110, lv denied 10 NY3d 716, rearg denied 11 NY3d 772), and in any event would not provide a basis for habeas corpus relief (see *People ex rel. Rios v Irvin*, 256 AD2d 1169, lv denied 93 NY3d 816; *People ex rel. Hendy v Leonardo*, 173 AD2d 992, lv denied 78 NY2d 857,

rearg dismissed 82 NY2d 703).

Entered: March 20, 2009

JoAnn M. Wahl
Clerk of the Court