

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

1117

KAH 08-01156

PRESENT: HURLBUTT, J.P., FAHEY, PERADOTTO, GREEN, AND PINE, JJ.

THE PEOPLE OF THE STATE OF NEW YORK EX REL.
PHILIP KLOSIN, PETITIONER-APPELLANT,

V

MEMORANDUM AND ORDER

JAMES L. BERBARY, SUPERINTENDENT, COLLINS
CORRECTIONAL FACILITY, RESPONDENT-RESPONDENT.

MICHAEL J. STACHOWSKI, P.C., BUFFALO (MICHAEL J. STACHOWSKI OF
COUNSEL), FOR PETITIONER-APPELLANT.

Appeal from a judgment (denominated order) of the Supreme Court,
Erie County (M. William Boller, A.J.), entered March 10, 2008. The
judgment dismissed the petition for a writ of habeas corpus.

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

Memorandum: Supreme Court properly dismissed the petition for a
writ of habeas corpus. The contentions of petitioner could have been
raised on his direct appeal from the judgment of conviction or by way
of a CPL 440.10 motion, and thus habeas corpus relief is not available
(see *People ex rel. Lanfair v Corcoran*, 60 AD3d 1351, lv denied 12
NY3d 714; *People ex rel. Smith v Burge*, 11 AD3d 907, lv denied 4 NY3d
701).

Entered: October 2, 2009

Patricia L. Morgan
Clerk of the Court