

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

1362

KAH 08-01538

PRESENT: SCUDDER, P.J., HURLBUTT, MARTOCHE, CENTRA, AND PERADOTTO, JJ.

THE PEOPLE OF THE STATE OF NEW YORK EX REL.
RAYMOND ALMODOVAR, PETITIONER-APPELLANT,

V

MEMORANDUM AND ORDER

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

CHARLES J. GREENBERG, BUFFALO, FOR PETITIONER-APPELLANT.

Appeal from a judgment (denominated order) of the Supreme Court, Erie County (Russell P. Buscaglia, A.J.), entered April 2, 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. Petitioner's contentions could have been raised on direct appeal from the judgment of conviction or by way of a motion pursuant to CPL article 440, and thus habeas corpus relief is unavailable (see *People ex rel. Lanfair v Corcoran*, 60 AD3d 1351, lv denied 12 NY3d 714; *People ex rel. Mills v Poole*, 55 AD3d 1289, lv denied 11 NY3d 712). Habeas corpus relief also is unavailable because petitioner would not be entitled to immediate release from custody even in the event that his contentions had merit (see *People ex rel. Douglas v Vincent*, 50 NY2d 901, 903; *People ex rel. Gloss v Costello*, 309 AD2d 1160, 1160-1161, lv denied 1 NY3d 504).

Entered: November 13, 2009

Patricia L. Morgan
Clerk of the Court