

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

**94**

**KAH 08-02009**

PRESENT: CENTRA, J.P., PERADOTTO, LINDLEY, PINE, AND GORSKI, JJ.

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THE PEOPLE OF THE STATE OF NEW YORK EX REL.  
ANDREW MCDANIELS, PETITIONER-APPELLANT,

V

MEMORANDUM AND ORDER

MICHAEL CORCORAN, SUPERINTENDENT, CAYUGA  
CORRECTIONAL FACILITY, BRIAN FISCHER,  
COMMISSIONER, NEW YORK STATE DEPARTMENT OF  
CORRECTIONAL SERVICES, JOSEPH FAZZARY,  
SCHUYLER COUNTY DISTRICT ATTORNEY, AND  
GEORGE B. ALEXANDER, CHAIRMAN, NEW YORK  
STATE DIVISION OF PAROLE,  
RESPONDENTS-RESPONDENTS.

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SHEILA E. SHEA, DIRECTOR, MENTAL HYGIENE LEGAL SERVICE, THIRD JUDICIAL  
DEPARTMENT, ALBANY (SHANNON STOCKWELL OF COUNSEL), FOR  
PETITIONER-APPELLANT.

ANDREW M. CUOMO, ATTORNEY GENERAL, ALBANY (FRANK BRADY OF COUNSEL),  
FOR RESPONDENTS-RESPONDENTS.

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Appeal from a judgment (denominated order) of the Supreme Court,  
Cayuga County (Thomas G. Leone, A.J.), entered July 29, 2008 in a  
habeas corpus proceeding. The judgment, inter alia, denied in part  
the petition.

It is hereby ORDERED that the judgment so appealed from is  
unanimously reversed on the law without costs and the petition is  
dismissed.

Memorandum: Petitioner commenced this proceeding seeking a writ  
of habeas corpus, alleging that he was being improperly detained on a  
violation of postrelease supervision that, according to petitioner,  
was erroneously imposed by the Department of Correctional Services  
(DOCS). Petitioner further alleged that County Court had improperly  
resentenced him to a period of postrelease supervision. Supreme Court  
granted the petition to the extent of vacating the violation warrant,  
but the court determined that petitioner had been validly resentenced  
by County Court. The court directed that petitioner be released from  
custody to postrelease supervision unless he was being held on an  
order issued pursuant to Mental Hygiene Law article 10. In fact, an  
order was in effect authorizing DOCS to retain custody of petitioner  
pending a probable cause hearing in a civil commitment proceeding  
pursuant to Mental Hygiene Law article 10, and petitioner did not move

to vacate that order. Habeas corpus relief was thus not available to petitioner. Even in the event that Supreme Court erred in determining that petitioner was properly resentenced to a period of postrelease supervision, he would not be entitled to the relief sought, i.e., immediate release from custody, in view of the order pursuant to Mental Hygiene Law article 10 (see *People ex rel. Hinton v Graham*, 66 AD3d 1402, lv denied \_\_\_ NY3d \_\_\_ [Jan. 19, 2010]; *People ex rel. Gloss v Costello*, 309 AD2d 1160, lv denied 1 NY3d 504). We therefore reverse the judgment and dismiss the petition.

Entered: February 11, 2010

Patricia L. Morgan  
Clerk of the Court