

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

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**KAH 09-02055**

PRESENT: MARTOCHE, J.P., LINDLEY, SCONIERS, PINE, AND GORSKI, JJ.

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THE PEOPLE OF THE STATE OF NEW YORK EX REL.  
MENTAL HYGIENE LEGAL SERVICE ON BEHALF OF  
SHANNON MARTINEK, PETITIONER-APPELLANT,

V

MEMORANDUM AND ORDER

DONALD SAWYER, PH.D., EXECUTIVE DIRECTOR OF  
CENTRAL NEW YORK PSYCHIATRIC CENTER,  
RESPONDENT-RESPONDENT.  
(APPEAL NO. 1.)

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EMMETT J. CREAHAN, DIRECTOR, MENTAL HYGIENE LEGAL SERVICE, ROCHESTER  
(DANA M. RAGSDALE OF COUNSEL), FOR PETITIONER-APPELLANT.

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

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Appeal from a judgment (denominated order and judgment) of the Supreme Court, Oneida County (Bernadette T. Romano, J.), entered August 14, 2009. The judgment denied and 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: In appeal No. 1, petitioner appeals from a judgment dismissing his petition seeking habeas corpus relief with respect to his civil commitment to Central New York Psychiatric Center pursuant to Mental Hygiene Law article 10 following his release from Livingston Correctional Facility. According to petitioner, he was not a detained sex offender within the meaning of article 10 when the proceeding pursuant to that article was commenced because he was not "a person who [was] in the care, custody, control, or supervision of an agency with jurisdiction" at that time (§ 10.03 [g]). Indeed, the record establishes that, at that time, petitioner was in fact illegally incarcerated for violating the terms of a period of postrelease supervision that had been improperly imposed after he had completed serving his determinate term of imprisonment. Petitioner thus is correct that the period of postrelease supervision, and thus the term of imprisonment resulting from his violation thereof, was a legal nullity (see *People v Williams*, 14 NY3d 198, 217, cert denied \_\_\_ US \_\_\_ [Oct. 4, 2010]; *People v Appleby*, 71 AD3d 1545). Nevertheless, we affirm the judgment in appeal No. 1 because, for the purposes of article 10, "[t]he legality of [petitioner's] custody is irrelevant"

(*People ex rel. Joseph II. v Superintendent of Southport Correctional Facility*, 15 NY3d 126, 134, rearg denied \_\_\_ NY3d \_\_\_ [Sept. 23, 2010]).

In appeal No. 2, petitioner appeals from a judgment dismissing his petition for a writ of habeas corpus with respect to his commitment to the Livingston Correctional Facility. We conclude that the appeal must be dismissed as moot, inasmuch as petitioner was released from imprisonment there upon the commencement of his civil commitment (see generally *People ex rel. Hampton v Dennison*, 59 AD3d 951, lv denied 12 NY3d 711).

Entered: November 19, 2010

Patricia L. Morgan  
Clerk of the Court