

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

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KAH 10-00654

PRESENT: SCUDDER, P.J., CENTRA, CARNI, SCONIERS, AND GREEN, JJ.

THE PEOPLE OF THE STATE OF NEW YORK EX REL.
DAVID MCCULLOUGH, PETITIONER-APPELLANT,

V

MEMORANDUM AND ORDER

NEW YORK STATE DIVISION OF PAROLE,
RESPONDENT-RESPONDENT.

D.J. & J.A. CIRANDO, ESQS., SYRACUSE (BRADLEY E. KEEM OF COUNSEL), FOR
PETITIONER-APPELLANT.

ANDREW M. CUOMO, ATTORNEY GENERAL, ALBANY (KATE H. NEPVEU OF COUNSEL),
FOR RESPONDENT-RESPONDENT.

Appeal from a judgment (denominated decision and order) of the Supreme Court, Orleans County (James P. Punch, A.J.), entered February 19, 2010 in a habeas corpus proceeding. The judgment denied 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 he allegedly did not receive timely notice of the final parole revocation hearing pursuant to Executive Law § 259-i (3) (f) (iii), nor did he receive effective assistance of counsel at the final hearing. We conclude that Supreme Court properly denied the petition. First, the record establishes that petitioner waived any issues concerning the allegedly untimely notice of the final parole revocation hearing at the time of that hearing (*see People ex rel. Webster v Travis*, 277 AD2d 546; *People ex rel. Medina v Superintendent*, 101 AD2d 871). Second, habeas corpus relief is not available based on petitioner's alleged denial of effective assistance of counsel at the final parole revocation hearing because he would not be entitled to immediate release from incarceration on that ground (*see People ex rel. Shannon v Khahaifa*, 74 AD3d 1867, *lv dismissed* 15 NY3d 868). We note that, although this Court has the power to convert this proceeding into one pursuant to CPLR article 78, we deem such conversion to be inappropriate on the record before us (*see id.* at 1867-1868).

Entered: March 25, 2011

Patricia L. Morgan
Clerk of the Court