

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

837

KAH 11-01670

PRESENT: CENTRA, J.P., FAHEY, PERADOTTO, CARNI, AND SCONIERS, JJ.

THE PEOPLE OF THE STATE OF NEW YORK EX REL.
MICHAEL GONZALEZ, PETITIONER-APPELLANT,

V

MEMORANDUM AND ORDER

WAYNE COUNTY SHERIFF AND NEW YORK STATE DIVISION
OF PAROLE, RESPONDENTS-RESPONDENTS.

ROBERT TUCKER, PALMYRA, FOR PETITIONER-APPELLANT.

MICHAEL GONZALEZ, PETITIONER-APPELLANT PRO SE.

ERIC T. SCHNEIDERMAN, ATTORNEY GENERAL, ALBANY (FRANK BRADY OF
COUNSEL), FOR RESPONDENT-RESPONDENT NEW YORK STATE DIVISION OF PAROLE.

Appeal from a judgment (denominated order) of the Supreme Court, Wayne County (Dennis M. Kehoe, A.J.), entered April 18, 2011 in a proceeding pursuant to CPLR article 70. 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 challenges by petitioner to the determination of the Administrative Law Judge following his final parole revocation hearing 'could have been addressed in the course of [an] administrative appeal,' and thus petitioner failed to exhaust his administrative remedies" (*People ex rel. Giguere v Barkley*, 70 AD3d 1321, lv denied 14 NY3d 710; see *People ex rel. Bratton v Mellas*, 28 AD3d 1207, 1207-1208, lv denied 7 NY3d 705; see also 9 NYCRR 8006.3 [a], [b]). "Moreover, even if petitioner's purported constitutional claims might otherwise 'justify a departure from the general rule requiring exhaustion of administrative remedies' . . . , habeas corpus relief nonetheless is unavailable as such claims, even if meritorious, would not entitle petitioner to immediate release" (*People ex rel. Ariola v Sears*, 53 AD3d 1001, 1002, lv denied 11 NY3d 710; see *People ex rel. Wethington v Beaver*, 306 AD2d 945, 946).

Entered: June 29, 2012

Frances E. Cafarell
Clerk of the Court