

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

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KAH 11-02184

PRESENT: SCUDDER, P.J., PERADOTTO, CARNI, WHALEN, AND MARTOCHE, JJ.

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

V

MEMORANDUM AND ORDER

MALCOLM R. CULLY, SUPERINTENDENT, COLLINS
CORRECTIONAL FACILITY, RESPONDENT-RESPONDENT.

MICHAEL J. STACHOWSKI, P.C., BUFFALO (MICHAEL J. STACHOWSKI OF
COUNSEL), FOR PETITIONER-APPELLANT.

ERIC T. SCHNEIDERMAN, ATTORNEY GENERAL, ALBANY (LAURA ETLINGER OF
COUNSEL), FOR RESPONDENT-RESPONDENT.

Appeal from a judgment (denominated order) of the Supreme Court,
Erie County (Christopher J. Burns, J.), entered September 16, 2011 in
a habeas corpus proceeding. The judgment dismissed the petition.

It is hereby ORDERED that the judgment so appealed from is
unanimously affirmed without costs.

Memorandum: Petitioner appeals from a judgment dismissing his
petition seeking a writ of habeas corpus on the ground that he was
denied effective assistance of counsel in connection with his plea of
guilty. We affirm. It is well established that a petition for habeas
corpus relief is not a proper vehicle for raising a contention of
ineffective assistance of counsel (*see People ex rel. Hinton v Graham*,
66 AD3d 1402, 1402, *lv denied* 13 NY3d 934, *rearg denied* 14 NY3d 795).
Even assuming, arguendo, that petitioner's contention had merit, we
would conclude that petitioner is not entitled to the relief sought,
i.e., immediate release (*see id.*; *People ex rel. Smith v Burge*, 11
AD3d 907, 908, *lv denied* 4 NY3d 701; *see generally People ex rel.*
Kaplan v Commissioner of Correction of City of N.Y., 60 NY2d 648,
649).

Entered: February 1, 2013

Frances E. Cafarell
Clerk of the Court