

State of New York
Supreme Court, Appellate Division
Third Judicial Department

Decided and Entered: January 22, 2009

504869

In the Matter of ABDUL-JABBOR
MALIK,

Appellant,

v

MEMORANDUM AND ORDER

STATE OF NEW YORK,

Respondent.

Calendar Date: November 24, 2008

Before: Mercure, J.P., Rose, Lahtinen, Malone Jr. and
Kavanagh, JJ.

Abdul-Jabbor Malik, Elmira, appellant pro se.

Appeal from a judgment of the Supreme Court (O'Shea, J.), entered April 29, 2008 in Chemung County, which denied petitioner's application for a writ of habeas corpus, in a proceeding pursuant to CPLR article 70, without a hearing.

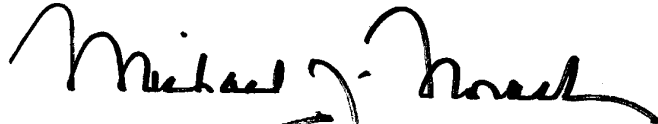
Petitioner commenced this CPLR article 70 proceeding for a writ of habeas corpus contending that his conditional release date was improperly calculated and, further, that the statute underlying his conviction for criminal possession of a weapon in the third degree (see Penal Law § 265.02) was unconstitutionally vague. Habeas corpus relief is unavailable where, as here, the contentions advanced could have been remedied by an administrative appeal (see People ex rel. Bariteau v Donelli, 24 AD3d 1065 [2005]) or raised either upon a direct appeal from the judgment of conviction or in the context of a collateral motion (see People ex rel. Cropper v Taylor, 48 AD3d 852, 853 [2008], lv denied 10 NY3d 710 [2008]; People ex rel. Encarnacion v McGinnis, 2 AD3d 933 [2003], lv denied 1 NY3d 510 [2004]). Moreover, even

assuming the issues raised by petitioner had merit, under the circumstances presented here, habeas corpus relief would be inappropriate as it would not entitle petitioner to immediate release from prison (see People ex rel. King v Bennett, 45 AD3d 1015, 1016 [2007], lv denied 10 NY3d 703 [2008]; People ex rel. Encarnacion v McGinnis, supra). Accordingly, Supreme Court's judgment is affirmed.

Mercure, J.P., Rose, Lahtinen, Malone Jr. and Kavanagh, JJ., concur.

ORDERED that the judgment is affirmed, without costs.

ENTER:

A handwritten signature in black ink, appearing to read "Michael J. Novack". The signature is fluid and cursive, with a large loop at the end.

Michael J. Novack
Clerk of the Court