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

Decided and Entered: January 26, 2012 512055

THE PEOPLE OF THE STATE OF NEW YORK ex rel. ADRIAN RILEY,
Appellant,
v MEMORANDUM AND ORDER

MARK L. BRADT, as Superintendent of Elmira Correctional Facility,
Respondent.

Calendar Date: December 12, 2011

Before: Lahtinen, J.P., Spain, Malone Jr., Stein and Egan Jr., JJ.

Adrian Riley, Elmira, appellant pro se.

Eric T. Schneiderman, Attorney General, Albany (Marlene O. Tuczinski of counsel), for respondent.

Appeal from a judgment of the Supreme Court (Reynolds Fitzgerald, J.), entered April 4, 2011 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.

In January 2009, petitioner was convicted following a jury trial of the crime of course of sexual conduct against a child in the first degree and was sentenced to 25 years in prison, to be followed by 20 years of postrelease supervision. Thereafter, he made an application pursuant to CPLR article 70 for a writ of habeas corpus. Supreme Court issued a written decision and judgment denying the application without a hearing and this

appeal ensued.

We affirm. It is well settled that habeas corpus relief is not the proper remedy to address matters that could have been raised on direct appeal or in a CPL article 440 motion (see People ex rel. Hall v Bradt, 85 AD3d 1422, 1422 [2011]; People ex rel. Berry v LaClair, 65 AD3d 1428 [2009]). Petitioner here challenges the subject matter jurisdiction of the trial court, claiming that the indictment was defective because it was not properly filed in accordance with CPL 210.05. Inasmuch as this jurisdictional claim could have been raised on direct appeal or in a CPL article 440 motion, Supreme Court properly denied the application (see People ex rel. Ward v Corcoran, 59 AD3d 1089, 1089 [2009]; People ex rel. Moore v Connolly, 56 AD3d 847, 848, lv denied 12 NY3d 701 [2009]). Under the circumstances presented, we find no reason to depart from traditional orderly procedure (see People ex rel. Chapman v LaClair, 64 AD3d 1026, 1026-1027 [2009], lv denied 13 NY3d 712 [2009]; People ex rel. Alvarez v West, 22 AD3d 996, 996 [2005], lv denied 6 NY3d 704 [2006]).

Lahtinen, J.P., Spain, Malone Jr., Stein and Egan Jr., JJ., concur.

ORDERED that the judgment is affirmed, without costs.

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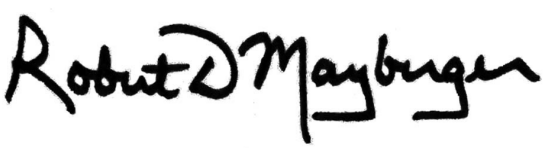

Robert D. Mayberger
Clerk of the Court