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

Decided and Entered: May 10, 2012 513890

THE PEOPLE OF THE STATE OF
NEW YORK ex rel.
TIMOTHY I.,
Appellant,
v MEMORANDUM AND ORDER

MR. CAMPBELL, as Director of
Capital District
Psychiatric Center,
Respondent.

Calendar Date: April 25, 2012

Before: Peters, P.J., Rose, Lahtinen, Malone Jr. and Garry, JJ.

Timothy I., Albany, appellant pro se.

Eric T. Schneiderman, Attorney General, Albany (Laura Etlinger of counsel), for respondent.

Garry, J.

Appeal from an order of the Supreme Court (Connolly, J.), entered November 15, 2011 in Albany County, which, among other things, in a proceeding pursuant to CPLR article 70, upon renewal, adhered to its prior decision denying petitioner's application for habeas corpus relief.

Following his plea of not responsible by reason of mental disease or defect to charges of arson, petitioner was committed in 2001 to a secure facility operated by the Office of Mental Health, where he remained pursuant to a series of retention orders until 2010, when the Office of Mental Health successfully

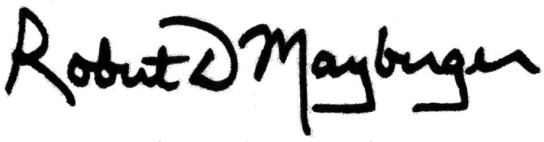
applied to continue his retention at a nonsecure inpatient facility. Thereafter, petitioner commenced this proceeding for a writ of habeas corpus alleging that his condition had improved such that he should be immediately released. Following a hearing, Supreme Court denied the application. Upon petitioner's motion for reconsideration, the court denied reargument and, to the extent the motion could be deemed an application for leave to renew, granted renewal, but adhered to its prior decision denying habeas corpus relief. Petitioner appeals.

Initially, we note that no appeal lies from the denial of a motion to reargue (see Hoover v State of New York, 80 AD3d 1020, 1020 [2011]). Further, we agree with Supreme Court that there is no merit to petitioner's claim that counsel was ineffective in failing to introduce petitioner's medical records into evidence at the hearing. The record indicates that counsel made a strategic decision to rely on petitioner's testimony as well as the testimony of a psychologist currently treating him, and petitioner's assertion that his medical records would have demonstrated his entitlement to immediate release is purely speculative (see Matter of Shangraw v Shangraw, 61 AD3d 1302, 1304-1305 [2009]; Matter of Hissam v Mackin, 41 AD3d 955, 957 [2007], lv denied 9 NY3d 809 [2007]).

Peters, P.J., Rose, Lahtinen and Malone Jr., JJ., concur.

ORDERED that the order is affirmed, without costs.

ENTER:



Robert D. Mayberger
Clerk of the Court