

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

Decided and Entered: September 19, 2019

528369

THE PEOPLE OF THE STATE OF
NEW YORK ex rel. EDDIE
MOISE,

Appellant,

v

MEMORANDUM AND ORDER

RAYMOND COVENY, as
Superintendent of Elmira
Correctional Facility,
Respondent.

Calendar Date: August 30, 2019

Before: Garry, P.J., Egan Jr., Clark, Mulvey and Aarons, JJ.

Eddie Moise, Elmira, appellant pro se.

Letitia James, Attorney General, Albany (Martin A. Hotvet
of counsel), for respondent.

Appeal from a judgment of the Supreme Court (Rich Jr.,
J.), entered December 28, 2018 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, who is currently serving a lengthy prison
term, commenced this CPLR article 70 proceeding seeking a writ
of habeas corpus alleging that the trial court lacked
jurisdiction because the evidence before the grand jury was
legally insufficient, the prosecutor engaged in misconduct by
offering false evidence and the indictment was procedurally and

technically defective. Supreme Court denied the petition without a hearing, and this appeal ensued.

We affirm. "Habeas corpus is not the appropriate remedy for raising claims that could have been raised on direct appeal or in the context of a CPL article 440 motion, even if they are jurisdictional in nature" (People ex rel. Nailor v Kirkpatrick, 156 AD3d 1100, 1100 [2017] [internal quotation marks and citations omitted]; accord People ex rel. McCray v LaClair, 161 AD3d 1490, 1491 [2018], lv dismissed and denied 32 NY3d 1143 [2019]). A review of petitioner's contentions establish that they could have been raised on his direct appeal or in a motion pursuant to CPL article 440 (see People ex rel. Rivas v Walsh, 40 AD3d 1327, 1328 [2007], lv denied 9 NY3d 814 [2007]; People ex rel. Rodriguez v Kuhlmann, 239 AD2d 721, 721 [1997], lv denied 90 NY2d 808 [1997]; People ex rel. Brown v Hanslmaier, 209 AD2d 801, 802 [1994], lv denied 85 NY2d 804 [1995]). Notwithstanding petitioner's assertion, we find no extraordinary circumstances warranting a departure from traditional orderly procedure (see People ex rel. Weay v Martuscello, 155 AD3d 1204, 1205 [2017], lv denied 31 NY3d 901 [2018]; People ex rel. Littlejohn v Griffin, 133 AD3d 996, 997 [2015], lv denied 27 NY3d 902 [2016]). As habeas corpus relief is unavailable, Supreme Court properly denied petitioner's application.

Garry, P.J., Egan Jr., Clark, Mulvey and Aarons, JJ.,
concur.

ORDERED that the judgment is affirmed, without costs.

ENTER:

A handwritten signature in black ink that reads "Robert D. Mayberger". The signature is written in a cursive, slightly slanted style.

Robert D. Mayberger
Clerk of the Court