

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

Decided and Entered: May 18, 2017

523082

THE PEOPLE OF THE STATE OF
NEW YORK ex rel. EDWIN
RODRIGUEZ,
Appellant,

v

MEMORANDUM AND ORDER

CHRISTOPHER MILLER, as
Superintendent of Great
Meadows Correctional
Facility,
Respondent.

Calendar Date: April 4, 2017

Before: Peters, P.J., McCarthy, Clark, Mulvey and Aarons, JJ.

Edwin Rodriguez, Comstock, for appellant.

Appeal from a judgment of the Supreme Court (McKeighan, J.), entered April 15, 2016 in Washington County, which dismissed petitioner's application, in a proceeding pursuant to CPLR article 70, without a hearing.

Petitioner is currently serving two concurrent five-year prison terms based on two convictions of robbery in the first degree (People v Rodriguez, 144 AD3d 498 [2016], lv denied 28 NY3d 1188 [2017]). Petitioner commenced this CPLR article 70 proceeding for a writ of habeas corpus claiming that he should be transferred to a Comprehensive Alcohol and Substance Abuse Treatment program and that he should not be housed in a maximum security facility (see generally Penal Law § 60.04 [6]; 7 NYCRR

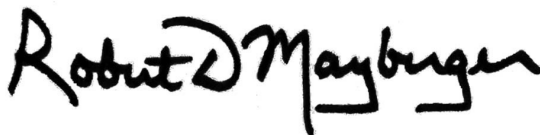
1950.2).¹ Supreme Court dismissed the petition, and petitioner now appeals.

Even if the issues raised by petitioner in his petition were substantiated and determined to have merit, he would not be entitled to immediate release from prison and, therefore, a writ of habeas corpus could not be granted (see People ex rel. Kaplan v Commissioner of Correction of City of N.Y., 60 NY2d 648, 649 [1983]; People ex rel. Vickery v Griffin, 125 AD3d 1018, 1019 [2015], lv denied 25 NY3d 908 [2015]; People ex rel. White v Smith, 120 AD3d 1469, 1470 [2014]). Accordingly, Supreme Court properly dismissed the petition (see CPLR 7003 [a]).

Peters, P.J., McCarthy, 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

¹ Respondent has submitted a letter indicating that it was not served and did not appear in Supreme Court.