

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

Decided and Entered: December 14, 2017

524816

THE PEOPLE OF THE STATE OF
NEW YORK ex rel. SCOTT R.
NAILOR,
Appellant,
v

MEMORANDUM AND ORDER

MICHAEL KIRKPATRICK, as
Superintendent of Clinton
Correctional Facility,
et al.,
Respondents.

Calendar Date: October 24, 2017

Before: McCarthy, J.P., Garry, Rose, Aarons and Rumsey, JJ.

Scott R. Nailor, Dannemora, appellant pro se.

Appeal from a judgment of the Supreme Court (Feldstein, J.), entered March 22, 2017 in Clinton County, which denied petitioner's application for a writ of habeas corpus, in a proceeding pursuant to CPLR article 70, without a hearing.

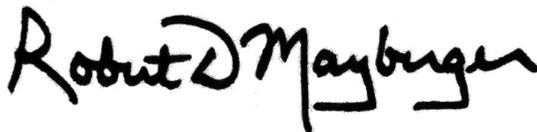
Petitioner is currently serving an aggregate prison term of 25 to 75 years following his 1999 conviction of multiple counts of sodomy in the first degree, sodomy in the second degree and sexual abuse in the second degree. He commenced this CPLR article 70 proceeding seeking a writ of habeas corpus claiming that, among other things, the indictment was defective and Supreme Court lacked jurisdiction. Supreme Court denied petitioner's application without a hearing, and petitioner now appeals.

"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. Miller v Rock, 109 AD3d 1062, 1062 [2013] [internal quotation marks and citations omitted]; see People ex rel. Fauntleroy v Rock, 113 AD3d 982, 983 [2014], lv denied 22 NY3d 865 [2014]; People ex rel. Williams v Cunningham, 106 AD3d 1303, 1304 [2013]). We agree with Supreme Court that petitioner's contentions could have been raised on his direct appeal. As we perceive no basis to depart from traditional orderly procedure, we conclude that Supreme Court properly denied his application (see People ex rel. Fauntleroy v Rock, 113 AD3d at 983; People ex rel. Cato v Tedford, 108 AD3d 988, 989 [2013], lv denied 22 NY3d 855 [2013]; People ex rel. Williams v Cunningham, 106 AD3d at 1304).

McCarthy, J.P., Garry, Rose, Aarons and Rumsey, 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