

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

Decided and Entered: November 25, 2020

529887

THE PEOPLE OF THE STATE OF
NEW YORK ex rel. STACY
LASHER,

Appellant,

v

MEMORANDUM AND ORDER

THERESA TYNON, as
Superintendent of Washington
Correctional Facility,
Respondent.

Calendar Date: November 13, 2020

Before: Garry, P.J., Lynch, Devine, Aarons and Reynolds
Fitzgerald, J.J.

Stacy Lasher, Comstock, appellant pro se.

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

Appeal from an order of the Supreme Court (McKeighan, J.),
entered August 12, 2019 in Washington County, which denied
petitioner's application for a writ of habeas corpus, in a
proceeding pursuant to CPLR article 70, without a hearing.

In 2017, defendant was convicted upon his guilty plea of
burglary in the second degree and is serving a prison sentence
of eight years to be followed by five years of postrelease
supervision, and the conviction was upheld on direct appeal
(People v Lasher, 166 AD3d 1242 [2018], lv denied 32 NY3d 1174

[2019]). Petitioner commenced this CPLR article 70 proceeding seeking a writ of habeas corpus, contending that his detention is illegal based upon prosecutorial misconduct that led to the denial of a preliminary hearing prior to being indicted. Supreme Court dismissed petitioner's application without a hearing, prompting this appeal.

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" (People ex rel. Dixon v Superintendent of E. Corr. Facility, 181 AD3d 1107, 1107 [2020] [internal quotation marks and citations omitted]; see People ex rel. West v Coveny, 181 AD3d 1141, 1141 [2020]). We agree with Supreme Court that petitioner's contention regarding prosecutorial misconduct that led to the denial of a preliminary hearing could have been raised on direct appeal or in a motion pursuant to CPL article 440 (see People ex rel. Dixon v Superintendent of E. Corr. Facility, 181 AD3d at 1108; People ex rel. Moise v Coveny, 175 AD3d 1693, 1693-1694 [2019], lv denied 34 NY3d 912 [2020]; People ex rel. McCray v LaClair, 161 AD3d 1490, 1491 [2019], lv dismissed and denied 32 NY3d 1143 [2019]). In fact, the issue of the denial of a preliminary hearing was raised unsuccessfully on direct appeal under a different rubric, as an ineffective assistance of counsel claim (People v Lasher, 166 AD3d at 1242).¹ We have considered petitioner's remaining assertions and discern no extraordinary circumstances warranting a departure from the traditional orderly procedure. Accordingly, we find that Supreme Court properly dismissed petitioner's application (see People ex rel. West v Coveny, 181 AD3d at 1142).

Garry, P.J., Lynch, Devine, Aarons and Reynolds
Fitzgerald, JJ., concur.

¹ According to the petition, petitioner filed a motion pursuant to CPL 440.10 in Schenectady County, which was denied in March 2019; the decision and motion papers are not in the record on appeal. The Attorney General represents that the same issue raised herein was also raised in that proceeding (see CPLR 7001 [6]).

ORDERED that the order 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