

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

Decided and Entered: May 16, 2013

514886

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THE PEOPLE OF THE STATE OF  
NEW YORK ex rel. TIMOTHY  
WILLIAMS,  
Appellant,

v

MEMORANDUM AND ORDER

RAYMOND CUNNINGHAM, as  
Superintendent of  
Woodbourne Correctional  
Facility,  
Respondent.

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Calendar Date: April 3, 2013

Before: Peters, P.J., Lahtinen, McCarthy and Garry, JJ.

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Timothy Williams, Woodbourne, appellant pro se.

Eric T. Schneiderman, Attorney General, Albany (Martin A. Hotvet of counsel), for respondent.

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Appeal from a judgment of the Supreme Court (LaBuda, J.), entered May 15, 2012 in Sullivan County, which denied petitioner's application for a writ of habeas corpus, in a proceeding pursuant to CPLR article 70, without a hearing.

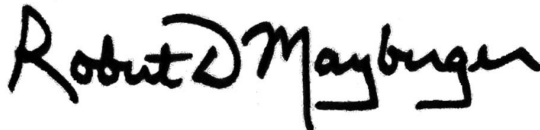
Petitioner, an inmate currently incarcerated upon his conviction, after a jury trial, of murder in the second degree and attempted murder in the second degree (People v Williams, 88 AD2d 983 [1982], lv denied 57 NY2d 690 [1982]), commenced this CPLR article 70 proceeding seeking a writ of habeas corpus claiming that the People failed to secure a lawful indictment. Supreme Court denied the application without a hearing.

Petitioner appeals, and we affirm. Significantly, "habeas corpus relief is not an appropriate remedy for resolving claims that could have been . . . raised on direct appeal or in a postconviction motion" (People ex rel. Collins v Billnier, 87 AD3d 1208, 1208 [2011], lv denied 18 NY3d 802 [2011] [internal quotation marks and citation omitted]; see People ex rel. Cicio v Rock, 85 AD3d 1468, 1469 [2011]), a situation that prevails even when the claims are ostensibly jurisdictional (see People ex rel. Burr v Rock, 93 AD3d 977, 977 [2012], lv denied 19 NY3d 806 [2012], lv dismissed 19 NY3d 1007 [2012]). Since petitioner has failed to present a sound reason for a departure from orderly procedure (see People ex rel. Hemphill v Rock, 95 AD3d 1579, 1579 [2012]), we perceive no basis to disturb the denial of his application.

Peters, P.J., Lahtinen, McCarthy and Garry, 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