

SUPREME COURT OF THE STATE OF NEW YORK
Appellate Division, Fourth Judicial Department

1146.1

KAH 11-00458

PRESENT: FAHEY, J.P., CARNI, SCONIERS, GORSKI, AND MARTOCHE, JJ.

THE PEOPLE OF THE STATE OF NEW YORK EX REL.
ROBERT CASS, PETITIONER-RESPONDENT,

V

MEMORANDUM AND ORDER

SIBATU KHAHAIFA, SUPERINTENDENT, ORLEANS
CORRECTIONAL FACILITY, RESPONDENT-APPELLANT.

ERIC T. SCHNEIDERMAN, ATTORNEY GENERAL, ALBANY (OWEN DEMUTH OF
COUNSEL), FOR RESPONDENT-APPELLANT.

MULDOON & GETZ, ROCHESTER (MARTIN P. MCCARTHY, II, OF COUNSEL), FOR
PETITIONER-RESPONDENT.

Appeal from a judgment of the Supreme Court, Orleans County
(James P. Punch, A.J.), entered May 17, 2010 in a habeas corpus
proceeding. The judgment granted the petition.

It is hereby ORDERED that the judgment so appealed from is
unanimously reversed on the law without costs and the petition is
dismissed.

Memorandum: Respondent appeals from an order granting the
petition for a writ of habeas corpus. We note at the outset that the
order was subsumed in the final judgment, from which no appeal was
taken. Nevertheless, we exercise our discretion to treat the notice
of appeal as valid and deem the appeal as taken from the judgment (see
Hughes v Nussbaumer, Clarke & Velzy, 140 AD2d 988; see also CPLR 5520
[c]), and we reverse. Petitioner was not entitled to habeas corpus
relief because he violated a condition of postrelease supervision,
which was properly imposed before petitioner completed the originally
imposed sentence of imprisonment (see *People v Lingle*, 16 NY3d 621,
629-633).

Entered: November 18, 2011

Patricia L. Morgan
Clerk of the Court