

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

**411**

**KAH 13-00519**

PRESENT: SMITH, J.P., FAHEY, PERADOTTO, SCONIERS, AND VALENTINO, JJ.

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THE PEOPLE OF THE STATE OF NEW YORK EX REL.  
DAVID F. TUSZYNSKI, PETITIONER-APPELLANT,

V

MEMORANDUM AND ORDER

SUPERINTENDENT DAVID STALLONE, CAYUGA  
CORRECTIONAL FACILITY, RESPONDENT-RESPONDENT.

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CHARLES A. MARANGOLA, MORAVIA, FOR PETITIONER-APPELLANT.

DAVID F. TUSZYNSKI, PETITIONER-APPELLANT PRO SE.

ERIC T. SCHNEIDERMAN, ATTORNEY GENERAL, ALBANY (MARTIN A. HOTVET OF  
COUNSEL), FOR RESPONDENT-RESPONDENT.

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Appeal from a judgment (denominated order) of the Supreme Court, Cayuga County (Mark H. Fandrich, A.J.), entered October 29, 2012 in a habeas corpus proceeding. The judgment denied the petition.

It is hereby ORDERED that the judgment so appealed from is unanimously affirmed without costs.

Memorandum: Supreme Court properly denied the petition for a writ of habeas corpus. Petitioner's contentions were, or could have been, raised on direct appeal from the judgment of conviction or in a motion pursuant to CPL article 440, and thus habeas corpus relief is unavailable (*see People ex rel. Montgomery v Artus*, 114 AD3d 1171, 1172; *see also People v Tuszyński*, 71 AD3d 1407, *lv denied* 15 NY3d 810). Additionally, "petitioner has shown no reason to justify a departure 'from traditional orderly procedure' " (*People ex rel. Lanfair v Corcoran*, 60 AD3d 1351, 1351, *lv denied* 12 NY3d 714; *see People ex rel. Johnson v Fischer*, 69 AD3d 1100, 1101, *lv denied* 14 NY3d 707, *rearg denied* 15 NY3d 745). We have reviewed petitioner's contention in his pro se supplemental brief, and we conclude that it also could have been asserted on direct appeal or in a postconviction motion.

Entered: May 2, 2014

Frances E. Cafarell  
Clerk of the Court