

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

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**KAH 16-00389**

PRESENT: WHALEN, P.J., SMITH, DEJOSEPH, CURRAN, AND SCUDDER, JJ.

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THE PEOPLE OF THE STATE OF NEW YORK EX REL.  
ANTONIO COLE, PETITIONER-APPELLANT,

V

MEMORANDUM AND ORDER

HAROLD D. GRAHAM, SUPERINTENDENT, AUBURN  
CORRECTIONAL FACILITY, RESPONDENT-RESPONDENT.

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WILLIAMS, HEINL, MOODY & BUSCHMAN, P.C., AUBURN (RYAN JAMES MULDOON OF  
COUNSEL), FOR PETITIONER-APPELLANT.

ERIC T. SCHNEIDERMAN, ATTORNEY GENERAL, ALBANY (FRANK BRADY OF  
COUNSEL), FOR RESPONDENT-RESPONDENT.

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Appeal from a judgment (denominated order) of the Supreme Court, Cayuga County (Thomas G. Leone, A.J.), entered August 21, 2015 in a habeas corpus proceeding. The judgment denied and dismissed the petition.

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

Memorandum: Petitioner appeals from a judgment dismissing his petition seeking a writ of habeas corpus on the ground that his guilty plea was coerced. Supreme Court properly dismissed the petition inasmuch as petitioner's contention concerning the voluntariness of his plea "was or could have been raised on direct appeal from the judgment of conviction or in a motion pursuant to CPL article 440" (*People ex rel. St. Germain v Walker*, 202 AD2d 1053, 1053, lv denied 83 NY2d 758; see *People ex rel. Peoples v New York State Dept. of Corr. Servs.*, 117 AD3d 1486, 1487, lv denied 23 NY3d 909). Contrary to petitioner's contention, the allegations in the petition do not warrant departure from traditional orderly procedure (see *People ex rel. Lifrieri v Lee*, 116 AD3d 720, 720, lv dismissed 24 NY3d 952, rearg denied 24 NY3d 1039; *People ex rel. Hammock v Meloni*, 233 AD2d 929, 929, lv denied 89 NY2d 807). Moreover, habeas corpus relief is unavailable to petitioner because, even if his contentions had merit, he would be entitled only to withdraw his guilty plea and not immediate release from custody (see *St. Germain*, 202 AD2d at 1053-1054; see generally *People ex rel. Walker v Dolce*, 125 AD3d 1305, 1305, lv denied 25 NY3d 910).

Entered: February 3, 2017

Frances E. Cafarell  
Clerk of the Court