

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

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**KAH 17-00592**

PRESENT: WHALEN, P.J., SMITH, LINDLEY, DEJOSEPH, AND NEMOYER, JJ.

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THE PEOPLE OF THE STATE OF NEW YORK EX REL.  
JOHN A.J. HINSPETER, II, PETITIONER-APPELLANT,

V

MEMORANDUM AND ORDER

DALE A. ARTUS, SUPERINTENDENT, ATTICA CORRECTIONAL  
FACILITY, RESPONDENT-RESPONDENT.

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JOHN A.J. HINSPETER, II, PETITIONER-APPELLANT PRO SE.

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Appeal from a judgment (denominated order) of the Supreme Court, Wyoming County (Michael M. Mohun, A.J.), entered February 6, 2017 in a habeas corpus proceeding. The judgment denied petitioner's "motion to compel."

It is hereby ORDERED that said appeal is unanimously dismissed without costs.

Memorandum: Petitioner commenced this proceeding seeking a writ of habeas corpus. His initial petition and a subsequent motion for leave to reargue were denied. He then filed a "motion to compel," which was denied in an order from which he now appeals. Because petitioner "failed to allege any new facts or to demonstrate a change in the law," his motion to compel was in fact a motion to reargue, which has no application to a judgment determining a special proceeding, and from which no appeal lies in any event (*People ex rel. Hinton v Graham*, 66 AD3d 1402, 1402 [4th Dept 2009], lv denied 13 NY3d 934 [2010], rearg denied 14 NY3d 795 [2010]; see *People ex rel. Seals v New York State Dept. of Corr. Servs.*, 32 AD3d 1262, 1263 [4th Dept 2006]). Moreover, petitioner's substantive claims are not properly raised in a petition for a writ of habeas corpus inasmuch as they "could have been raised on direct appeal or in a proceeding pursuant to CPL article 440" (*People ex rel. Frederick v Superintendent, Auburn Corr. Facility*, 156 AD3d 1468, 1468 [4th Dept 2017]).

Entered: March 23, 2018

Mark W. Bennett  
Clerk of the Court