

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

1082

KAH 19-01293

PRESENT: SMITH, J.P., PERADOTTO, CURRAN, BANNISTER, AND DEJOSEPH, JJ.

THE PEOPLE OF THE STATE OF NEW YORK EX REL.
RICHARD B. LYON, PETITIONER-APPELLANT,

V

MEMORANDUM AND ORDER

MATTHEW THOMS, SUPERINTENDENT, FIVE POINTS
CORRECTIONAL FACILITY AND ANTHONY J. ANNUCCI,
COMMISSIONER, NEW YORK STATE DEPARTMENT OF
CORRECTIONS AND COMMUNITY SUPERVISION,
RESPONDENTS-RESPONDENTS.

CHARLES J. GREENBERG, AMHERST, FOR PETITIONER-APPELLANT

LETITIA JAMES, ATTORNEY GENERAL, ALBANY (MARCUS J. MASTRACCO OF
COUNSEL), FOR RESPONDENTS-RESPONDENTS.

Appeal from a judgment (denominated order) of the Supreme Court, Seneca County (Daniel J. Doyle, J.), entered January 22, 2019 in a habeas corpus proceeding. The judgment, inter alia, denied the petition.

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

Memorandum: Petitioner commenced this proceeding seeking a writ of habeas corpus, claiming that he was denied effective assistance of counsel on his direct appeal due to appellate counsel's conflict of interest. He now appeals from a judgment that, inter alia, denied the petition. We affirm. Regardless of petitioner's contention that he could not have raised that claim on his direct appeal precisely because he was denied effective assistance of appellate counsel, a proceeding for a writ of habeas corpus is not the appropriate proceeding in which to raise such a claim inasmuch as the remedy for ineffective assistance of appellate counsel is a new appeal, not immediate release from custody (see *People ex rel. Smith v Burge*, 11 AD3d 907, 908 [4th Dept 2004], lv denied 4 NY3d 701 [2004]; *People ex rel. Rivera v Smith*, 244 AD2d 944, 944 [4th Dept 1997], lv denied 91 NY2d 808 [1998]). Petitioner's claim is properly the subject of a motion for a writ of error coram nobis (see *People ex rel. Williams v Sheahan*, 145 AD3d 1517, 1518 [4th Dept 2016], lv denied 29 NY3d 908 [2017]; *People ex rel. Williams v Griffin*, 114 AD3d 976, 976 [3d Dept 2014]).

Entered: November 20, 2020

Mark W. Bennett
Clerk of the Court