

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

770

KAH 20-01142

PRESENT: PERADOTTO, J.P., CARNI, LINDLEY, WINSLOW, AND BANNISTER, JJ.

THE PEOPLE OF THE STATE OF NEW YORK EX REL.
GERMAINE BROWN, PETITIONER-APPELLANT,

V

MEMORANDUM AND ORDER

STATE OF NEW YORK DEPARTMENT OF CORRECTIONS,
RESPONDENT-RESPONDENT.

DAVID J. PAJAK, ALDEN, FOR PETITIONER-APPELLANT.

LETITIA JAMES, ATTORNEY GENERAL, ALBANY (SARAH L. ROSENBLUTH OF
COUNSEL), FOR RESPONDENT-RESPONDENT.

Appeal from a judgment (denominated judgment and order) of the Supreme Court, Orleans County (Sanford A. Church, A.J.), entered August 19, 2020 in a habeas corpus proceeding. The judgment dismissed the petition.

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

Memorandum: Petitioner is currently serving a sentence of imprisonment at Orleans Correctional Facility (OCF). In June 2020, he filed a petition for a writ of habeas corpus seeking his immediate release on the ground that his underlying health conditions placed him at increased risk if infected with the novel coronavirus responsible for causing COVID-19. Petitioner alleged that, as a result of the COVID-19 pandemic, the conditions at OCF and the risks presented by his confinement constitute cruel and unusual punishment in violation of the United States and New York Constitutions (see US Const, 8th Amend; NY Const, art I, § 5). Petitioner appeals from a judgment dismissing his petition. We affirm.

Even assuming, arguendo, that petitioner, having received the benefit of assigned counsel, was therefore entitled to the protections equivalent to the constitutional standard of effective assistance of counsel afforded to defendants in criminal proceedings, we reject petitioner's contention that he was denied effective assistance of counsel. Viewing the record as a whole, we conclude that counsel provided meaningful representation (see *People v Baldi*, 54 NY2d 137, 147 [1981]).

Petitioner further contends that Supreme Court erred in dismissing the petition and that the matter should be remitted for

further development of the record. We reject that contention. Petitioner failed to satisfy his burden to demonstrate that his detention at OCF was illegal (see CPLR 7010 [a]; *People ex rel. Figueroa v Keyser*, 193 AD3d 1148, 1149-1150 [3d Dept 2021]; *People ex rel. Carroll v Keyser*, 184 AD3d 189, 194-196 [3d Dept 2020]). Thus, the court properly dismissed the petition.

Entered: October 8, 2021

Ann Dillon Flynn
Clerk of the Court