

Supreme Court of the State of New York
Appellate Division: Second Judicial Department

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FRED T. SANTUCCI, J.P.
HOWARD MILLER
JOHN M. LEVENTHAL
L. PRISCILLA HALL, JJ.

2010-03674

DECISION, ORDER & JUDGMENT

In the Matter of Jason Baxter, petitioner, v Alan
L. Honorof, etc., respondent.

Jason Baxter, East Meadow, N.Y., petitioner pro se.

Andrew M. Cuomo, Attorney General, New York, N.Y. (Roberta L. Martin of
counsel), for respondent.

Proceeding pursuant to CPLR article 78 in the nature of mandamus to compel the respondent, Alan L. Honorof, an Acting Justice of the Supreme Court, Nassau County, in effect, to allow the petitioner, a criminal defendant in an action entitled *People v Baxter*, pending in Supreme Court, Nassau County, under Indictment No. 1658N-09, to appear in court, and in the nature of prohibition to prohibit the respondent from otherwise proceeding with that action. Application by the petitioner to prosecute this proceeding as a poor person.

ORDERED that the application to prosecute this proceeding as a poor person is granted to the extent that the filing fee imposed by CPLR 8022(b) is waived, and the application is otherwise denied as academic; and it is further,

ADJUDGED that the petition is denied and the proceeding is dismissed on the merits, without costs or disbursements.

The extraordinary remedy of mandamus will lie only to compel the performance of a ministerial act and only when there exists a clear legal right to the relief sought (*see Matter of Legal Aid Society of Sullivan County v Scheinman*, 53 NY2d 12, 16). In addition, “[b]ecause of its extraordinary nature, prohibition is available only where there is a clear legal right, and then only

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when a court—in cases where judicial authority is challenged—acts or threatens to act either without jurisdiction or in excess of its authorized powers” (*Matter of Holtzman v Goldman*, 71 NY2d 564, 569; *see Matter of Rush v Mordue*, 68 NY2d 348). The petitioner has failed to demonstrate a clear legal right to the relief sought.

SANTUCCI, J.P., MILLER, LEVENTHAL and HALL, JJ., concur.

ENTER:


Matthew G. Kiernan
Clerk of the Court