

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

D28325
W/kmg

_____AD3d_____

JOSEPH COVELLO, J.P.
HOWARD MILLER
THOMAS A. DICKERSON
LEONARD B. AUSTIN, JJ.

2010-06946

DECISION & JUDGMENT

In the Matter of Percy Randall, petitioner, v Robert C. McGann, etc., respondent; Richard A. Brown, etc., nonparty.

Mahler & Harris, P.C., Kew Gardens, N.Y. (Stephen R. Mahler of counsel), for petitioner.

Richard A. Brown, District Attorney, Kew Gardens, N.Y. (John M. Castellano and Brooke E. Barnes of counsel), nonparty pro se.

Proceeding pursuant to CPLR article 78, inter alia, in the nature of prohibition to prohibit the respondent, Robert C. McGann, an Acting Justice of the Supreme Court, from presiding over a trial in a criminal action entitled *People v Randall*, pending in the Supreme Court, Queens County, under Indictment No. 2864/09.

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

“Because of its extraordinary nature, prohibition is available only where there is a clear legal right, and then only 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, 352). The petitioner’s underlying motion to dismiss the indictment was determined in an order of the Supreme Court, Queens County, dated June 16, 2010. The petitioner’s remedy is to raise his claims on direct appeal from any judgment of conviction which may ultimately be rendered (see generally *Billings v Erlbaum*, 306 AD2d 526).

August 31, 2010

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Accordingly, the petitioner failed to demonstrate a clear legal right to the relief sought.

COVELLO, J.P., MILLER, DICKERSON and AUSTIN, JJ., concur.

ENTER:


Matthew G. Kiernan
Clerk of the Court