

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

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MARK C. DILLON, J.P.
HOWARD MILLER
JOHN M. LEVENTHAL
CHERYL E. CHAMBERS, JJ.

2010-01048

DECISION, ORDER & JUDGMENT

In the Matter of Tyrone Houston, petitioner,
v Patricia DiMango, etc., et al., respondents.

Tyrone Houston, New York, N.Y., petitioner pro se.

Andrew M. Cuomo, Attorney General, New York, N.Y. (Ron A. Eden of counsel,
for respondent Patricia DiMango.

Proceeding pursuant to CPLR article 78 in the nature of prohibition to prohibit the respondent Patricia DiMango, a Justice of the Supreme Court, from continuing with further proceedings in a criminal action entitled *People v Houston*, pending in the Supreme Court, Kings County, under Indictment No. 7919/09, and application by the petitioner to prosecute the proceeding as a poor person.

ORDERED that the application to prosecute the appeal 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; and it is further,

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*

August 31, 2010

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v Goldman, 71 NY2d 564, 569; see *Matter of Rush v Mordue*, 68 NY2d 348, 352). The petitioner has failed to demonstrate a clear legal right to the relief sought.

DILLON, J.P., MILLER, LEVENTHAL and CHAMBERS, JJ., concur.

ENTER:

A handwritten signature in black ink that reads "Matthew G. Kiernan". The signature is written in a cursive, slightly slanted style.

Matthew G. Kiernan
Clerk of the Court