

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

D28624
H/prt

_____AD3d_____

WILLIAM F. MASTRO, J.P.
JOSEPH COVELLO
THOMAS A. DICKERSON
SHERI S. ROMAN, JJ.

2010-07913

DECISION & JUDGMENT

In the Matter of Patricia Bregel, petitioner, v Justices
of the Supreme Court of New York, et al., respondents.

Mischel & Horn, P.C. (Richard E. Mischel of counsel), for petitioner.

Andrew M. Cuomo, Attorney General (Anthony J. Tomari of counsel), for respondent
Justices of the Supreme Court of New York.

Kathleen M. Rice, District Attorney, Mineola, N.Y. (Robert T. Hayden of counsel),
respondent pro se.

Proceeding pursuant to CPLR article 78 in the nature of prohibition and mandamus,
inter alia, to prohibit the respondent Kathleen Rice, District Attorney of Nassau County, from
continuing to prosecute the petitioner under Nassau County Indictment No. 1371N-09, and to
reinstate the petitioner's plea of guilty under that indictment.

ADJUDGED that those branches of the petition which were to prohibit the respondent
Kathleen Rice, District Attorney of Nassau County, from continuing to prosecute the petitioner under
Nassau County Indictment No. 1371N-09, and to reinstate the petitioner's plea of guilty under that
indictment are denied, as academic; and it is further,

ADJUDGED that the branch of the petition which was to compel the imposition of
a sentence in accordance with the plea agreement is denied; and it is further,

ADJUDGED that the proceeding is dismissed, without costs or disbursements.

October 5, 2010

Page 1.

MATTER OF BREGEL v JUSTICES OF THE SUPREME COURT OF NEW YORK

On August 25, 2010, the Supreme Court reinstated the petitioner's plea of guilty under Nassau County Indictment No. 1371N-09, which it had previously vacated. Accordingly, those branches of the petition which were to prohibit the respondent Kathleen Rice, District Attorney of Nassau County, from continuing to prosecute the petitioner under that indictment, and to reinstate the petitioner's plea of guilty under that indictment are denied, as academic.

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 Socy. of Sullivan County v Scheinman*, 53 NY2d 12, 16). The petitioner has failed to demonstrate a clear legal right to the relief sought (*see Kurz v Justices of the Supreme Court*, 228 AD2d 74).

MASTRO, J.P., COVELLO, DICKERSON and ROMAN, JJ., concur.

ENTER:


Matthew G. Kiernan
Clerk of the Court