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

D28955
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WILLIAM F. MASTRO, J.P.
JOSEPH COVELLO
THOMAS A. DICKERSON
SHERI S. ROMAN, JJ.

2010-06770 DECISION, ORDER & JUDGMENT

In the Matter of Kieran Duffy, petitioner,
v Steven M. Jaeger, etc., et al., respondents.

Robin Mary Heaney, Rockville Centre, N.Y., for petitioner.

Kathleen M. Rice, District Attorney, Mineola, N.Y. (Teresa Aiello of counsel), respondent pro se.

Proceeding pursuant to CPLR article 78 in the nature of mandamus, inter alia, to compel the respondent Steven M. Jaeger, a Justice of the Supreme Court, Nassau County, to permit the petitioner, a defendant in a criminal action entitled *People v Duffy*, pending in the County Court, Nassau County, under Docket No. 33058/09, to enter the judicial diversion program without entering a plea of guilty, pursuant to CPL 216.05(4)(b). Motion by the petitioner for leave to amend the petition to add Kathleen M. Rice, District Attorney, Nassau County, as a respondent.

Upon the papers filed in support of the motion, and no papers having been filed in opposition thereto, it is

ORDERED that the motion for leave to amend the petition to add Kathleen M. Rice, District Attorney, Nassau County, as a respondent is granted, and the caption is amended accordingly; and it is further,

ADJUDGED that the petition is denied and the proceeding is dismissed, 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 Socy. of Sullivan County v Scheinman*, 53 NY2d 12, 16). The petitioner has failed to demonstrate a clear legal right to the relief sought.

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

ENTER:

Matthew G. Kiernan
Clerk of the Court