

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

D29082
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_____AD3d_____

REINALDO E. RIVERA, J.P.
THOMAS A. DICKERSON
RANDALL T. ENG
LEONARD B. AUSTIN, JJ.

2010-06657

DECISION, ORDER & JUDGMENT

In the Matter of Junior Collins, also known as
Prince Albert Marshall, petitioner, v Debra Silber,
et al., respondents.

Junior Collins, also known as Prince Albert Marshall, Malone, N.Y., appellant pro se.

Charles J. Hynes, District Attorney, Brooklyn, N.Y. (Morgan J. Dennehy of counsel),
respondent pro se.

Proceeding pursuant to CPLR article 78 in the nature of mandamus and prohibition, inter alia, to compel vacatur of the petitioner's plea of guilty and judgment of conviction rendered October 30, 1987, in a matter entitled *People v Collins* in the Supreme Court, Kings County, under Indictment No. 4529/87, and to prohibit the enforcement of the plea, and application by the petitioner to prosecute the proceeding as a poor person.

ORDERED that the application for leave to prosecute the 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, 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). Similarly, the

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MATTER OF COLLINS, also known as MARSHALL v SILBER

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).

The petitioner has failed to demonstrate a clear legal right to the relief sought.

RIVERA, J.P., DICKERSON, ENG and AUSTIN, JJ., concur.

ENTER:


Matthew G. Kiernan
Clerk of the Court