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

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JOSEPH COVELLO, J.P.
CHERYL E. CHAMBERS
PLUMMER E. LOTT
JEFFREY A. COHEN, JJ.

2010-09342 DECISION, ORDER & JUDGMENT

In the Matter of Bryant K. Hall, petitioner, v Stephen L. Braslow, etc., respondent.

Bryant K. Hall, Napanoch, N.Y., petitioner pro se.

Eric T. Schneiderman, Attorney General, New York, N.Y. (Michael J. Keane of counsel), for respondent.

Proceeding pursuant to CPLR article 78 in the nature of mandamus, inter alia, to compel the respondent, Stephen L. Braslow, a Judge of the County Court, Suffolk County, to "review and overturn" an order dated August 30, 2010, denying the petitioner's motion pursuant to CPL 440.20 to set aside a resentence imposed January 17, 2006, under Indictment No. 1443/01, and to compel the respondent to resentence the petitioner pursuant to CPL 380.20, and application by the petitioner to prosecute the proceeding as a poor person.

ORDERED that the application to prosecute this 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 on the merits, 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 Society of Sullivan County v Scheinman, 53 NY2d 12, 16). The petitioner has failed to demonstrate a clear legal right to the relief sought.

COVELLO, J.P., CHAMBERS, LOTT and COHEN, JJ., concur.

ENTER:

Matthew G. Kiernan
Clerk of the Court