

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

D30250  
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Submitted - February 10, 2011

A. GAIL PRUDENTI, P.J.  
RANDALL T. ENG  
ARIEL E. BELEN  
SANDRA L. SGROI, JJ.

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2009-06831

DECISION & ORDER

In the Matter of Scottie Morrison, appellant, v Charles  
J. Hynes, etc., et al., respondents.

(Index No. 29332/08)

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Scottie Morrison, Auburn, N.Y., appellant pro se.

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

In a proceeding pursuant to CPLR article 78, inter alia, in the nature of mandamus to compel the initiation of a criminal prosecution, the petitioner appeals from a judgment of the Supreme Court, Kings County (Kramer, J.), dated January 20, 2009, which, in effect, denied the petition and dismissed the proceeding.

ORDERED that the judgment is affirmed, without costs or disbursements.

The extraordinary remedy of a writ of mandamus is available in limited circumstances only to compel the performance of a purely ministerial act which does not involve the exercise of official discretion or judgment, and only when a clear legal right to the relief sought has been demonstrated (*see Klostermann v Cuomo*, 61 NY2d 525, 537; *Matter of Salisbury v Lapidez*, 277 AD2d 319; *Matter of Kusky v Town of Islip*, 266 AD2d 460, 461; *Matter of Perazzo v Lindsay*, 30 AD2d 179, *affd* 23 NY2d 764). Here, the petitioner seeks to compel the performance of acts involving the exercise of official discretion or judgment (*see Matter of Nieblas v Kings County Dist. Attorney*, 209 AD2d 703; *People ex rel. Doe v Beaudoin*, 102 AD2d 359, 365; *see also Sassower v Commission on Jud. Conduct of State of N.Y.*, 289 AD2d 119) and, thus, the remedy of mandamus is not available.

March 1, 2011

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The petitioner's remaining contentions are either without merit or not properly before this Court.

Accordingly, the Supreme Court properly, in effect, denied the petition and dismissed the proceeding.

PRUDENTI, P.J., ENG, BELEN and SGROI, 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