

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

D30290
Y/prt

_____AD3d_____

A. GAIL PRUDENTI, P.J.
DANIEL D. ANGIOLILLO
ANITA R. FLORIO
SANDRA L. SGROI, JJ.

2010-10876

DECISION, ORDER & JUDGMENT

In the Matter of Antonio Hennis, petitioner, v
Elizabeth A. Foley, etc., et al., respondents.

Robert C. Newman, Brooklyn, N.Y., for petitioner.

Eric T. Schneiderman, Attorney General, New York, N.Y. (Rebecca Culley of counsel), for respondent Elizabeth A. Foley.

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

Proceeding pursuant to CPLR article 78 in the nature of prohibition and mandamus, inter alia, to prohibit the respondent Elizabeth A. Foley, a Justice of the Supreme Court, Kings County, from enforcing an order of the same court dated September 20, 2010, in a matter entitled *People v Hennis* pending in the Supreme Court, Kings County, under Indictment No. 2782/10, and to compel the respondent Justice to direct the Legal Aid Society to represent the petitioner in that matter, and application by the petitioner to prosecute the proceeding as a poor person.

ORDERED that the application to process 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.

“Because of its extraordinary nature, prohibition is available only where there is a clear

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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 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.

PRUDENTI, P.J., ANGIOLILLO, FLORIO 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