

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

D30350
W/kmb

_____AD3d_____

REINALDO E. RIVERA, J.P.
RUTH C. BALKIN
JOHN M. LEVENTHAL
L. PRISCILLA HALL, JJ.

2010-11365

DECISION, ORDER & JUDGMENT

In the Matter of James Pettus, petitioner,
v Abraham Gerges, etc., respondent.

James Pettus, Pine City, N.Y., petitioner pro se.

Eric T. Schneiderman, Attorney General, New York, N.Y. (Charles F. Sanders of
counsel), for respondent.

Proceeding pursuant to CPLR article 78 in the nature of mandamus, inter alia, to compel the respondent Abraham Gerges, a Justice of the Supreme Court, Kings County, to make and sign an affidavit attesting that he signed a superior court warrant of arrest, referable to the petitioner, for the crime of grand larceny in the fourth degree in an underlying criminal action entitled *People v Pettus*, commenced in the Supreme Court, Kings County, under Indictment No. 6013/02, and application by the petitioner for poor person relief.

ORDERED that the application for poor person relief is granted to the extent that the filing fee imposed by CPLR 8022(b) is waived, and the application is otherwise denied; 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 where 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

March 8, 2011

Page 1.

MATTER OF PETTUS v GERGES

demonstrate a clear legal right to the relief sought.

RIVERA, J.P., BALKIN, LEVENTHAL and HALL, JJ., concur.

ENTER:


Matthew G. Kiernan
Clerk of the Court