

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

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REINALDO E. RIVERA, J.P.
MARK C. DILLON
L. PRISCILLA HALL
SHERI S. ROMAN, JJ.

2010-12030

DECISION, ORDER & JUDGMENT

In the Matter of Tyrone Houston, petitioner, v
Matthew J. D’Emic, etc., et al., respondents.

Tyrone Houston, New York, N.Y., petitioner pro se.

Eric T. Schneiderman, New York, N.Y. (Charles F. Sanders of counsel), for
respondent Matthew J. D’Emic.

Proceeding pursuant to CPLR article 78, in the nature of prohibition, inter alia, to prohibit the respondent, Matthew J. D’Emic, a Justice of the Supreme Court, from presiding over any proceedings or permitting the District Attorney, Kings County, to prosecute the petitioner in a criminal action entitled *People v Houston*, pending in the Supreme Court, Kings County, under Indictment No. 2546/06, and in the nature of mandamus to compel an independent investigation into the manner in which the District Attorney, Kings County, conducted grand jury and other pretrial proceedings in that criminal action, 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.

“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 wether without jurisdiction or in excess of its authorized powers” (*Matter of*

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Holtzman v Goldman, 71 NY2d 564, 569; *see Matter of Rush v Mordue*, 68 NY2d 348, 352). 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 failed to demonstrate a clear legal right to the relief sought.

RIVERA, J.P., DILLON, HALL and ROMAN, JJ., concur.

ENTER:


Matthew G. Kiernan
Clerk of the Court