

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

D30726
C/kmb

_____AD3d_____

REINALDO E. RIVERA, J.P.
DANIEL D. ANGIOLILLO
RANDALL T. ENG
SANDRA L. SGROI, JJ.

2011-00587

DECISION & JUDGMENT

In the Matter of Matthew Fanning, petitioner, v
Joseph Grosso, etc., et al, respondents.

Benedict S. Gullo, Jr., Mineola, N.Y. for petitioner.

Eric T. Schneiderman, Attorney General, New York, N.Y. (Roberta L. Martin of counsel), for respondents Joseph Grosso and Fernando Camacho.

Richard A. Brown, District Attorney, Kew Gardens, N.Y. (John M. Castellano and Sharon Y. Brodt of counsel), respondent pro se.

Proceeding pursuant to CPLR article 78, inter alia, in the nature of mandamus to compel the respondent Joseph Grosso, a Justice of the Supreme Court, Queens County, to issue an order permitting the petitioner's counsel and computer forensic expert to examine alleged child pornography either at a secure location outside the presence of law enforcement or a law enforcement location free of surveillance, harassment, and/or unreasonable access restrictions, and in the nature of prohibition to prohibit the respondent Fernando Camacho, a Justice of the Supreme Court, Queens County, and/or any successor Justice from proceeding to trial on the charges against the petitioner until a reasonable time after the inspection.

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). In addition, “[b]ecause of its

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extraordinary nature, prohibition is available only when there is a clear 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). The petitioner has failed to demonstrate a clear legal right to the relief sought.

RIVERA, J.P., ANGIOLILLO, ENG and SGROI, JJ., concur.

ENTER:


Matthew G. Kiernan
Clerk of the Court