

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

D31014  
H/kmb

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DANIEL D. ANGIOLILLO, J.P.  
ANITA R. FLORIO  
PLUMMER E. LOTT  
LEONARD B. AUSTIN, JJ.

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2010-08845

DECISION, ORDER & JUDGMENT

In the Matter of Dexter Murray, petitioner, v Michael  
Pesce, etc., et al., respondents.

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Dexter Murray, Attica, 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 Michael Pesce, a Justice of the Supreme Court, Kings County, to vacate the  
sentence imposed upon the petitioner on January 14, 1986, under Indictment No. 3557/83, and to  
resentence him under that indictment, and application by the petitioner to prosecute the proceeding  
as a poor person.

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, 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*

April 26, 2011

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*Aid Socy. of Sullivan County v Scheinman*, 53 NY2d 12, 16). The petitioner has failed to demonstrate a clear legal right to the relief sought.

ANGIOLILLO, J.P., FLORIO, LOTT and AUSTIN, JJ., concur.

ENTER:

  
Matthew G. Kiernan  
Clerk of the Court