

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

D31597  
C/kmb

\_\_\_\_\_AD3d\_\_\_\_\_

WILLIAM F. MASTRO, J.P.  
ANITA R. FLORIO  
ARIEL E. BELEN  
ROBERT J. MILLER, JJ.

---

2010-10558

DECISION, ORDER & JUDGMENT

In the Matter of Edwin Frazier, petitioner, v  
James Hudson, et al., respondents.

---

Edwin Frazier, Ossining, N.Y., petitioner pro se.

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

Proceeding pursuant to CPLR article 78 in the nature of mandamus to compel the respondent James Hudson, a Justice of the County Court, Suffolk County, to vacate a judgment rendered December 5, 2008, convicting the petitioner of murder in the second degree and criminal sale of a controlled substance in the third degree, upon his plea of guilty under Indictment Nos. 573B-07 and 565-07, 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 proceeding is denied and the petition 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 Aid Socy. of Sullivan County v Scheiman*, 53 NY2d 12, 16). The petitioner has failed to

June 7, 2011

Page 1.

MATTER OF FRAZIER v HUDSON

demonstrate a clear legal right to the relief sought.

MASTRO, J.P., FLORIO, BELEN and MILLER, JJ., concur.

ENTER:

  
Matthew G. Kiernan  
Clerk of the Court