

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

D32004
C/kmb

_____AD3d_____

REINALDO E. RIVERA, J.P.
RANDALL T. ENG
SHERI S. ROMAN
ROBERT J. MILLER, JJ.

2011-03646

DECISION, ORDER & JUDGMENT

In the Matter of Daniel Marcel, petitioner, v
William Garnett, etc., et al., respondents.

Daniel Marcel, Brooklyn, N.Y., petitioner pro se.

Eric T. Schneiderman, Attorney General, New York, N.Y. (Michael J. Siudzinski of counsel), for respondent William Garnett.

Proceeding pursuant to CPLR article 78 in the nature of mandamus, inter alia, to compel the respondent William Garnett, a Justice of the Supreme Court, Kings County, to vacate a judgment of that court rendered December 21, 2004, convicting the petitioner of sexual abuse in the first degree, upon his plea of guilty, under Superior Court Information No. 8427/03, and to dismiss the Superior Court Information, or to permit the petitioner to withdraw his plea of guilty, 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*

July 5, 2011

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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., ENG, ROMAN and MILLER, JJ., concur.

ENTER:


Matthew G. Kiernan
Clerk of the Court