

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

D32343
C/kmb

_____AD3d_____

WILLIAM F. MASTRO, J.P.
PETER B. SKELOS
THOMAS A. DICKERSON
PLUMMER E. LOTT, JJ.

2011-07244

DECISION, ORDER & JUDGMENT

In the Matter of Troy Sneed, petitioner, v
John P. Walsh, etc., et al., respondents.

Troy Sneed, East Elmhurst, N.Y., petitioner pro se.

Eric T. Schneiderman, Attorney General, New York, N.Y. (Anthony J. Tomari of counsel), for respondent John P. Walsh.

Charles J. Hynes, District Attorney, Brooklyn, N.Y. (Monique Ferrell of counsel), respondent pro se and for respondent Michael Saint-Pre.

Proceeding pursuant to CPLR article 78, inter alia, in the nature of prohibition to prohibit the respondent John P. Walsh, a Justice of the Supreme Court, Kings County, from proceeding to trial on Kings County Indictment No. 8053/09 on the ground of lack of jurisdiction, and in the nature of mandamus to compel the respondent John P. Walsh to determine certain motions made by the petitioner. Motion by the petitioner to stay the trial of Kings County Indictment No. 8053/09, 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,

ORDERED that the motion to stay the trial of Kings County Indictment No. 8053/09 is denied; and it is further,

ADJUDGED that the petition is denied and the proceeding is dismissed on the merits, without costs or disbursements.

September 27, 2011

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“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 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, 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.

The petitioner’s remaining contentions are without merit.

MASTRO, J.P., SKELOS, DICKERSON and LOTT, JJ., concur.

ENTER:


Matthew G. Kiernan
Clerk of the Court