

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

D33333  
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DANIEL D. ANGIOLILLO, J.P.  
THOMAS A. DICKERSON  
PLUMMER E. LOTT  
ROBERT J. MILLER, JJ.

2011-08753

DECISION, ORDER & JUDGMENT

In the Matter of Paul Rizzo, petitioner, v William K. Nelson, etc., et al., respondents.

Paul Rizzo, New City, N.Y., petitioner pro se.

Eric T. Schneiderman, Attorney General, New York, N.Y. (Roberta L. Martin of counsel), for respondent William K. Nelson.

Proceeding pursuant to CPLR article 78, inter alia, in the nature of prohibition to prohibit the respondent William K. Nelson, a Judge of the County Court, Rockland County, from presiding over a trial in a criminal action entitled *People v Rizzo*, pending in the County Court, Rockland County, under Indictment No. 11-00114, 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.

“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 petitioner’s underlying motion to dismiss the indictment was determined in an order of the County

December 20, 2011

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Court, Rockland County, dated June 7, 2011. The petitioner's remedy is to raise his claims on direct appeal from any judgment of conviction which may ultimately be rendered (*see Matter of Randall v McGann*, 76 AD3d 713; *see generally Billings v Erlbaum*, 306 AD2d 526).

Accordingly, the petitioner failed to demonstrate a clear legal right to the relief sought.

ANGIOLILLO, J.P., DICKERSON, LOTT and MILLER, JJ., concur.

ENTER:

  
Aprilanne Agostino  
Clerk of the Court