

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

D34653
O/kmb

_____AD3d_____

DANIEL D. ANGIOLILLO, J.P.
ARIEL E. BELEN
PLUMMER E. LOTT
ROBERT J. MILLER, JJ.

2012-01222

DECISION, ORDER & JUDGMENT

In the Matter of Walter Adelman, petitioner, v
Michael A. Gary, etc., respondent.

Walter Adelman, Wallkill, N.Y., appellant pro se.

Proceeding pursuant to CPLR article 78, inter alia, in the nature of mandamus to compel the respondent, Michael A. Gary, a Justice of the Supreme Court, Kings County, to vacate a sentence imposed by the same court (Greenberg, J.) on August 22, 1988, and to resentence the petitioner, or to reconsider the petitioner's prior motion pursuant to CPL 440.20, which was denied by the respondent, 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 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., BELEN, LOTT and MILLER, JJ., concur.

ENTER:


Aprilanne Agostino
Clerk of the Court

May 1, 2012

MATTER OF ADELMAN v GARY