

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

D35158
C/kmb

_____AD3d_____

PETER B. SKELOS, J.P.
RANDALL T. ENG
ARIEL E. BELEN
JEFFREY A. COHEN, JJ.

2011-10003

DECISION, ORDER & JUDGMENT

In the Matter of Winiford Fortune, petitioner, v
James Kralik, etc., et al, respondents.

Winifred Fortune, New City, N.Y., petitioner pro se.

Proceeding pursuant to CPLR article 78, inter alia, in the nature of prohibition to prohibit the respondents from proceeding with an underlying criminal prosecution entitled *People v Fortune*, pending in the County Court, Rockland County, under Indictment No. 2011-155, and in the nature of mandamus to compel the respondents to dismiss the indictment, 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 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.

May 30, 2012

Page 1.

MATTER OF FORTUNE v KRALIK

SKELOS, J.P., ENG, BELEN and COHEN, JJ., concur.

ENTER:


Aprilanne Agostino
Clerk of the Court