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

D35521
Y/kmb

_____AD3d_____

REINALDO E. RIVERA, J.P.
ANITA R. FLORIO
CHERYL E. CHAMBERS
JEFFREY A. COHEN, JJ.

2012-01338 DECISION, ORDER & JUDGMENT

In the Matter of De Andre Williams, petitioner, v
Barbara Zambelli, et al., respondents.

De Andre Williams, Malone, N.Y., petitioner pro se.

Janet DiFiore, District Attorney, White Plains, N.Y. (Adrienne M. Chapoulie and Robert K. Sauer of counsel), respondent pro se.

Proceeding pursuant to CPLR article 78, inter alia, in the nature of mandamus to compel the respondent Janet DiFiore to provide the petitioner with an "offer of proof" in connection with a purported motion pursuant to CPL article 440 (*see Matter of Williams v Zambelli*, _____ AD3d_____ [Appellate Div. Docket No. 2012-00362, decided herewith], and application by the petitioner for poor person relief. Cross motion by the respondent Janet DiFiore to dismiss the proceeding and to impose sanctions upon the petitioner.

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 the branch of the cross motion which is to dismiss the proceeding is granted, and the cross motion 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 failed to demonstrate a clear legal right to the relief sought.

RIVERA, J.P., FLORIO, CHAMBERS and COHEN, JJ., concur.

ENTER:

Aprilanne Agostino
Clerk of the Court