

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

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PETER B. SKELOS, J.P.
MARK C. DILLON
JOHN M. LEVENTHAL
SANDRA L. SGROI, JJ.

2012-02657

DECISION, ORDER & JUDGMENT

In the Matter of Michael Burnett, petitioner, v
P. Murphy, etc., et al., respondents.

Michael Burnett, East Elmhurst, N.Y., petitioner pro se.

Eric T. Schneiderman, Attorney General, New York, N.Y. (Charles F. Sanders of counsel), for respondent Martin P. Murphy, named herein as P. Murphy.

Proceeding pursuant to CPLR article 78, inter alia, in the nature of prohibition to prohibit the respondents from proceeding with an underlying criminal action entitled *People v Burnett*, commenced in the Supreme Court, Kings County, under Indictment No. 8242/10, 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 has failed to demonstrate a clear legal right to the relief sought.

SKELOS, J.P., DILLON, LEVENTHAL and SGROI, JJ., concur.

ENTER:


Aprilanne Agostino
Clerk of the Court