

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

D36278
C/kmb

_____AD3d_____

Submitted - September 27, 2011

REINALDO E. RIVERA, J.P.
ANITA R. FLORIO
LEONARD B. AUSTIN
SANDRA L. SGROI, JJ.

2011-03471

DECISION & JUDGMENT

In the Matter of Allen B. (Anonymous), petitioner,
v Christine A. Sproat, etc., et al., respondents.

Mental Hygiene Legal Service, Mineola, N.Y. (Lesley De Lia and Dennis B. Feld of counsel), for petitioner.

Eric T. Schneiderman, Attorney General, New York, N.Y. (Susan Anspach of counsel), for respondents Christine A. Sproat and Michael F. Hogan.

Proceeding pursuant to CPLR article 78 in the nature of a writ of prohibition to prohibit enforcement of a provision of an amended order of conditions of the Supreme Court, Dutchess County (Sproat, J.), dated December 16, 2010, which directed that should the petitioner fail to comply with any of the other conditions imposed in that amended order of conditions “and refuse to appear for or comply with a psychiatric examination,” the Commissioner of the New York State Office of Mental Health “shall apply to the court for a Temporary Confinement Order for the purpose of conducting an effective psychiatric examination in a secure facility.”

ADJUDGED that the petition is granted, on the law, without costs or disbursements, and the respondents are prohibited from enforcing or taking action to enforce the provision of the amended order of conditions dated December 16, 2010, which directed that should the petitioner fail to comply with any of the other conditions imposed in that order “and refuse to appear for or comply with a psychiatric examination,” the Commissioner of the New York State Office of Mental Health “shall apply to the court for a Temporary Confinement Order for the purpose of conducting an effective psychiatric examination in a secure facility.”

For the reasons stated in *Matter of Robert T. (Anonymous) v Sproat* (_____AD3d_____) [decided herewith]), the CPLR article 78 petition seeking to prohibit the respondents from enforcing or taking action to enforce the provision of the order of conditions which directed that,

November 28, 2012

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should the petitioner fail to comply with any of the other conditions imposed in that order “and refuse to appear for or comply with a psychiatric examination,” the Commissioner of the New York State Office of Mental Health “shall apply to the court for a Temporary Confinement Order for the purpose of conducting an effective psychiatric examination in a secure facility” is granted.

FLORIO, AUSTIN and SGROI, JJ., concur.

RIVERA, J.P., dissents and votes to deny the petition and dismiss the proceeding for the reasons stated in his dissenting memorandum in *Matter of Robert T. (Anonymous) v Sproat* (_____AD3d_ _____ [decided herewith]).

ENTER:


Aprilanne Agostino
Clerk of the Court