

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

D36549
O/kmb

_____AD3d_____

PETER B. SKELOS, J.P.
RUTH C. BALKIN
THOMAS A. DICKERSON
SYLVIA HINDS-RADIX, JJ.

2012-09539

DECISION, ORDER & JUDGMENT

In the Matter of Stephen T. Mitchell, petitioner, v
Patricia DiMango, etc., et al., respondents.

Stephen T. Mitchell, South Orange, New Jersey, petitioner pro se.

Charles J. Hynes, District Attorney, Brooklyn, N.Y. (Monique Ferrell of counsel), for
respondents.

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 Mitchell*, pending in the Supreme Court, Kings County, under Indictment No. 4743/2010, and in the nature of mandamus to compel the respondents to allow him to subpoena certain information, and application to waive the filing fee imposed by CPLR 8022(b).

ORDERED that the application to waive the filing fee imposed by CPLR 8022(b) is granted; 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).

November 28, 2012

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MATTER OF MITCHELL v DiMANGO

The petitioner has failed to demonstrate a clear legal right to the relief sought.

SKELOS, J.P., BALKIN, DICKERSON and HINDS-RADIX, JJ., concur.

ENTER:


Aprilanne Agostino
Clerk of the Court