

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

D36619
W/kmb

_____AD3d_____

WILLIAM F. MASTRO, J.P.
REINALDO E. RIVERA
CHERYL E. CHAMBERS
PLUMMER E. LOTT, JJ.

2011-09984

DECISION, ORDER & JUDGMENT

In the Matter of Adrian Foote, petitioner, v James
Kralik, etc., et al., respondents.

Adrian Foote, New City, N.Y., petitioner pro se.

Eric T. Schneiderman, Attorney General, New York, N.Y. (Charles F. Sanders of
counsel), for respondent William Nelson.

Proceeding pursuant to CPLR article 78, inter alia, in the nature of mandamus to
compel the respondent James Kralik, the Sheriff of Rockland County, to release the petitioner from
incarceration, and in the nature of prohibition to prohibit the respondent Thomas P. Zugibe, the
District Attorney of Rockland County, from prosecuting a criminal action entitled *People v Foote*,
pending in the County Court, Rockland County, under Indictment No. 2011-0002, and to prohibit
the respondent William Nelson, a Judge of the County Court, Rockland County, from presiding over
that criminal action, 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 branch of the petition which is in the nature of mandamus to
compel the respondent James Kralik, the Sheriff of Rockland County, to release the petitioner from
incarceration is denied as academic, those branches of the petition which are in the nature of
prohibition to prohibit the respondent Thomas P. Zugibe, the District Attorney of Rockland County,
from prosecuting a criminal action entitled *People v Foote*, pending in the County Court, Rockland
County, under Indictment No. 2011-0002, and to prohibit the respondent William Nelson, a Judge
of the County Court, Rockland County, from presiding over that criminal action are denied on the

December 5, 2012

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merits, and the proceeding is dismissed, without costs or disbursements.

Since the petitioner has been deported to Jamaica, and is no longer in the custody of the respondent James Kralik, the Sheriff of Rockland County, that branch of the petition which is in the nature of mandamus to compel Kralik to release the petitioner from incarceration must be denied as academic.

“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 failed to establish a clear legal right to relief in the nature of prohibition.

MASTRO, J.P., RIVERA, CHAMBERS and LOTT, JJ., concur.

ENTER:

A handwritten signature in black ink, reading "Aprilanne Agostino". The signature is written in a cursive, flowing style.

Aprilanne Agostino
Clerk of the Court