

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

D36834
O/kmb

_____AD3d_____

REINALDO E. RIVERA, J.P.
MARK C. DILLON
SHERI S. ROMAN
JEFFREY A. COHEN, JJ.

2012-04207

DECISION, ORDER & JUDGMENT

In the Matter of David Maxwell, petitioner,
v Mary H. Smith, etc., respondent.

David Maxwell, Auburn, N.Y., petitioner pro se.

Eric T. Schneiderman, Attorney General, New York, N.Y. (Andrew H. Meier of counsel), for respondent.

Proceeding pursuant to CPLR article 78, inter alia, in the nature of mandamus to compel the respondent, Mary H. Smith, a Justice of the Supreme Court, Westchester County, to determine the petitioner's motion to renew his prior motions to resettle the transcript of his trial in an underlying criminal action entitled *People v Maxwell*, commenced in that court under Indictment No. 1481/00, or to conduct a reconstruction hearing, 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.

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 has failed to

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demonstrate a clear legal right to the relief sought.

RIVERA, J.P., DILLON, ROMAN and COHEN, JJ., concur.

ENTER:


Aprilanne Agostino
Clerk of the Court