

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

D54709
L/htr

_____AD3d_____

WILLIAM F. MASTRO, J.P.
JOHN M. LEVENTHAL
SANDRA L. SGROI
FRANCESCA E. CONNOLLY, JJ.

2017-10979

DECISION, ORDER, & JUDGMENT

In the Matter of Dennis E. (Anonymous), petitioner,
v Matthew J. D’Emic, etc., et al., respondents.

Mental Hygiene Legal Service, Mineola, NY (Arthur A. Baer of counsel), for petitioner.

Eric T. Schneiderman, Attorney General, New York, NY (Seth M. Rokosky of counsel), for respondent Ann Marie T. Sullivan.

Eric Gonzalez, District Attorney, Brooklyn, NY (David C. Kelly of counsel), respondent pro se.

Proceeding pursuant to CPLR article 78, inter alia, in the nature of prohibition to prohibit the respondent Matthew J. D’Emic, a Justice of the Supreme Court, Kings County, from enforcing an order dated June 29, 2017, in an underlying criminal action against the petitioner pending in the Supreme Court, Kings County. Cross motion by the respondent Ann Marie T. Sullivan to dismiss the proceeding on the ground that the petition fails to state a claim upon which relief can be granted.

ORDERED that the cross motion is granted; and it is further,

ADJUDGED that the petition is denied and the proceeding is dismissed, 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

March 7, 2018


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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 establish a clear legal right to the relief sought.

MASTRO, J.P., LEVENTHAL, SGROI and CONNOLLY, JJ., concur.

ENTER:


Aprilanne Agostino
Clerk of the Court