

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

D55227
M/htr

_____AD3d_____

RUTH C. BALKIN, J.P.
BETSY BARROS
ANGELA G. IANNACCI
LINDA CHRISTOPHER, JJ.

2018-01233

DECISION, ORDER & JUDGMENT

In the Matter of Johnathan Johnson, petitioner,
v Ellen M. Spodek, etc., respondent.

Johnathan Johnson, Malone, NY, petitioner pro se.

Eric T. Schneiderman, Attorney General, New York, NY (Carly Weinreb of counsel),
for respondent.

Proceeding pursuant to CPLR article 78 in the nature of mandamus to compel the respondent, Honorable Ellen M. Spodek, a Justice of the Supreme Court, Kings County, to determine the petitioner's motion in an action entitled *Johnson v King*, pending in that court under Index No. 3782/14, and application by the petitioner for poor person relief.

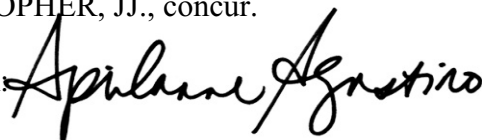
ORDERED that the application for poor person relief is granted to the extent that the filing fee imposed by CPLR 8022(b) is waived, and the application is otherwise denied; and it is further,

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 Legal Aid Soc'y of Sullivan County, Inc. v Scheinman*, 53 NY2d 12, 16). The petitioner failed to demonstrate a clear legal right to the relief sought.

BALKIN, J.P., BARROS, IANNACCI and CHRISTOPHER, JJ., concur.

ENTER:



Aprilanne Agostino
Clerk of the Court

May 2, 2018

MATTER OF JOHNSON v SPODEK