

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

D20845  
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ROBERT A. SPOLZINO, J.P.  
DAVID S. RITTER  
FRED T. SANTUCCI  
EDWARD D. CARNI, JJ.

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2008-08351

DECISION & JUDGMENT

In the Matter of Marvin Smith, petitioner,  
v Jeffrey Cohen, etc., respondent.

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Marvin Smith, Valhalla, N.Y., petitioner pro se.

Andrew M. Cuomo, Attorney General, New York, N.Y. (Charles F. Sanders of counsel), for respondent.

Proceeding pursuant to CPLR article 78 in the nature of prohibition, inter alia, to prohibit the respondent, Jeffrey Cohen, a Justice of the County Court, Westchester County, from proceeding with the trial in an action entitled *People v Smith*, pending in that court under Indictment No. 08-00084.

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 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 demonstrate a clear legal right to the relief sought.

SPOLZINO, J.P., RITTER, SANTUCCI and CARNI, JJ., concur.

ENTER:



James Edward Pelzer  
Clerk of the Court

October 21, 2008

MATTER OF SMITH v COHEN