

SUPREME COURT OF THE STATE OF NEW YORK
Appellate Division, Fourth Judicial Department

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CA 08-01919

PRESENT: SCUDDER, P.J., HURLBUTT, FAHEY, GREEN, AND GORSKI, JJ.

IN THE MATTER OF MICHAEL R. TOPOLSKI,
PETITIONER-APPELLANT,

V

MEMORANDUM AND ORDER

MARY I. JUMBELIC, M.D., CHIEF MEDICAL
EXAMINER OF ONONDAGA COUNTY,
RESPONDENT-RESPONDENT.

MICHAEL R. TOPOLSKI, PETITIONER-APPELLANT PRO SE.

Appeal from an order of the Supreme Court, Onondaga County (John J. Brunetti, A.J.), entered August 6, 2008. The order, insofar as appealed from, denied in part the application of petitioner pursuant to County Law § 677 (3) (b) for production and disclosure of certain materials.

It is hereby ORDERED that the order so appealed from is unanimously affirmed without costs.

Memorandum: Petitioner, an inmate in a correctional facility, brought an application pursuant to County Law § 677 (3) (b) seeking the production and disclosure of, inter alia, X ray films, CT scans, MRI films, photographs, CD-ROM copies of data, and audio recordings relating to the autopsy of an individual whom petitioner was convicted of intentionally killing. Petitioner contends that such items will prove that he killed the victim in self-defense. We reject the contention of petitioner that Supreme Court abused its discretion in denying in part his application for production and disclosure of those materials. We note that the court granted that part of the application seeking production and disclosure of all written records relating to the autopsy and to the investigation into the victim's cause of death, and we take notice of our own records from petitioner's previous appeal from the judgment of conviction (*People v Topolski*, 28 AD3d 1159, lv dismissed 6 NY3d 898, lv denied 7 NY3d 764, 795), which establish that autopsy photographs and the victim's toxicology report were disclosed to petitioner during the criminal proceedings (see generally *Oakes v Muka*, 56 AD3d 1057, 1059; *New York State Dam Ltd. Partnership v Niagara Mohawk Power Corp.*, 222 AD2d 792, 794 n, lv dismissed in part and denied in part 87 NY2d 1041). We further note that petitioner's justification defense was fully

litigated at the trial and was rejected by the jury.

Entered: July 2, 2009

Patricia L. Morgan
Clerk of the Court