

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

D12395
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_____AD3d_____

STEPHEN G. CRANE, J.P.
GABRIEL M. KRAUSMAN
ROBERT A. SPOLZINO
PETER B. SKELOS, JJ.

2006-07182

DECISION, ORDER & JUDGMENT

In the Matter of Robert O'Connor, petitioner,
v Deborah Stevens Modica, etc., respondent.

Robert O'Connor, Woodbourne, N.Y., petitioner pro se.

Eliot Spitzer, Attorney-General, New York, N.Y. (Anthony J. Tomari of counsel), for respondent.

Proceeding pursuant to CPLR article 78 in the nature of mandamus, inter alia, to compel the respondent Deborah Stevens Modica, a Justice of the Criminal Court of the City of New York, Queens County, to vacate an order of that court dated May 15, 2006, in an action entitled *People v O'Connor*, pending under Docket No. 6Q005976, 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, without costs or disbursements.

The extraordinary remedy of mandamus will lie only to compel the performance of a ministerial act and only when there exists a clear legal right to the relief sought (*see Matter of Legal*

October 31, 2006

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Aid Society of Sullivan County v Scheinman, 53 NY2d 12, 16). The petitioner has failed to demonstrate a clear legal right to the relief sought.

CRANE, J.P., KRAUSMAN, SPOLZINO and SKELOS, JJ., concur.

ENTER:

A handwritten signature in black ink, reading "James Edward Pelzer". The signature is written in a cursive, flowing style.

James Edward Pelzer
Clerk of the Court