

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

D13231
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_____AD3d_____

HOWARD MILLER, J.P.
STEPHEN G. CRANE
ROBERT A. LIFSON
MARK C. DILLON, JJ.

2006-08909

DECISION, ORDER & JUDGMENT

In the Matter of Derrick Hamilton, petitioner,
v Cheryl Chambers, etc., respondent.

Derrick Hamilton, Wallkill, N.Y., petitioner pro se.

Eliot Spitzer, Attorney-General, New York, N.Y. (Charles F. Sanders of counsel), for
respondent.

Proceeding pursuant to CPLR article 78 in the nature of mandamus, inter alia, to compel Cheryl Chambers, a Justice of the Supreme Court, Kings County, to conduct proceedings wherein the petitioner may submit exculpatory evidence with regard to his motion pursuant to CPL article 440, which was denied by order of the Supreme Court, Kings County, dated May 17, 2006, and application for leave to prosecute the proceeding as a poor person.

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*

December 26, 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.

MILLER, J.P., CRANE, LIFSON and DILLON, JJ., concur.

ENTER:

A handwritten signature in black ink, reading "James Edward Pelzer". The signature is written in a cursive style with a large, prominent initial "J".

James Edward Pelzer
Clerk of the Court