

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

D14241
G/mv

_____AD3d_____

WILLIAM F. MASTRO, J.P.
ANITA R. FLORIO
EDWARD D. CARNI
WILLIAM E. McCARTHY, JJ.

2007-01061

DECISION, ORDER & JUDGMENT

In the Matter of Robert J. Fileccia, petitioner,
v Daniel Donovan, etc., et al., respondents.

Robert J. Fileccia, Staten Island, N.Y., petitioner pro se.

Daniel M. Donovan, Jr., District Attorney, Staten Island, N.Y. (Karen E. Varriale of
counsel), respondent pro se.

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

Proceeding pursuant to CPLR article 78 in the nature of prohibition, inter alia, to prohibit the respondents from proceeding with a criminal action entitled *People v Fileccia*, pending under Richmond County Indictment No. 23/04, 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.

"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*

March 13, 2007

MATTER OF FILECCIA v DONOVAN

Page 1.

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.

MASTRO, J.P., FLORIO, CARNI and McCARTHY, 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