

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

D14866  
G/cb

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Submitted - March 19, 2007

STEPHEN G. CRANE, J.P.  
GABRIEL M. KRAUSMAN  
GLORIA GOLDSTEIN  
MARK C. DILLON, JJ.

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2006-11243

DECISION, ORDER & JUDGMENT

In the Matter of Jose Ruiz, petitioner, v Glenn S.  
Goord, etc., et al., respondents; Richard A. Brown, etc.,  
proposed additional respondent.

(Index No. 158/03)

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Lynn W. L. Fahey, New York, N.Y. (John Gemmill of counsel), for petitioner.

Andrew M. Cuomo, Attorney General, New York, N.Y. (Michael J. Keane and  
Sunita Kini-Tandon of counsel), for respondents.

Richard A. Brown, District Attorney, Kew Gardens, N.Y. (William H. Branigan of  
counsel), proposed additional respondent pro se.

Proceeding pursuant to CPLR article 78 in the nature of mandamus to compel the  
respondent Glenn S. Goord to eliminate the five-year term of post-release supervision from the  
petitioner's sentence, and in the nature of prohibition to prohibit the respondent Randall Eng, a  
Justice of the Supreme Court, Queens County, from resentencing the petitioner. Motion by the  
respondents, in effect, to dismiss the proceeding and to vacate an interim stay granted by this court  
on December 5, 2006. Cross motion by the petitioner to amend the petition to name Richard A.  
Brown, District Attorney, Queens County, as an additional respondent.

ORDERED that the respondents' motion, in effect, to dismiss the proceeding is  
granted; and it is further,

ORDERED that the petitioner's cross motion is denied; and it is further,

April 24, 2007

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ADJUDGED that the proceeding is dismissed, without costs or disbursements.

This court does not have subject matter jurisdiction to entertain this proceeding (*see* CPLR 7804[b]; 506[b]; *Matter of Nolan v Lungen*, 61 NY2d 789, 790; *Matter of New York State Rifle & Pistol Assn. v City of Mount Vernon*, 148 AD2d 616, 618). To the extent that the petition seeks a writ of prohibition against the respondent Randall Eng, a Justice of the Supreme Court, Queens County, the petition is purely hypothetical, as Justice Eng is not about to, nor has he threatened to, resentence the petitioner (*see* CPLR 7803[2]). With respect to the respondent Glenn S. Goord, we note that a proceeding pursuant to CPLR article 78 against that respondent must be brought in the Supreme Court (*see* CPLR 506).

CRANE, J.P., KRAUSMAN, GOLDSTEIN and DILLON, 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