

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

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_____AD3d_____

Submitted - January 26, 2007

A. GAIL PRUDENTI, P.J.
ROBERT W. SCHMIDT
GABRIEL M. KRAUSMAN
RUTH C. BALKIN, JJ.

2006-04638

DECISION & ORDER

Darin Gioeli, et al., appellants, v State of New York, respondent.

(Index No. 108519)

George C. Vlachos, P.C., Islandia, N.Y., for appellants.

Andrew M. Cuomo, Attorney General, New York, N.Y. (Patrick Barnett-Mulligan and Frank K. Walsh of counsel), for respondent.

In a claim to recover damages for unjust conviction and imprisonment pursuant to Court of Claims Act § 8-b, the claimants appeal from an order of the Court of Claims (Lack, J.), dated March 16, 2006, which granted the defendant's motion to dismiss the claim.

ORDERED that the order is affirmed, with costs.

Pursuant to Court of Claims Act § 8-b(3), in order to make out a claim for unjust conviction and imprisonment, the claimants were required to establish by documentary evidence that the claimant Darin Gioeli had been convicted of one or more felonies, was sentenced to a term of imprisonment, that he served a part of the sentence, and that his judgment of conviction was reversed and the indictment dismissed (*see David W. v State of New York*, 27 AD3d 111). The requirements of the statute are to be strictly construed (*see Groce v State of New York*, 272 AD2d 519, 520; *Reed v State of New York*, 78 NY2d 1; *Fudger v State of New York*, 131 AD2d 136, 140).

April 24, 2007

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Here, the Court of Claims properly dismissed the claim due to the claimants' failure to submit the required documentary evidence with their claim (*see Vigliotti v State of New York*, 24 AD3d 1217, 1218; *Piccarreto v State of New York*, 144 AD2d 920; *Stewart v State of New York*, 133 AD2d 112, 113).

PRUDENTI, P.J., SCHMIDT, KRAUSMAN and BALKIN, 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