

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

D15626  
Y/hu

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ANITA R. FLORIO, J.P.  
STEVEN W. FISHER  
EDWARD D. CARNI  
WILLIAM E. McCARTHY, JJ.

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2007-02520

DECISION, ORDER & JUDGMENT

In the Matter of Gregory White, petitioner,  
v People of State of New York, etc.,  
et al., respondents.

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Gregory White, Fishkill, N.Y., petitioner pro se.

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

Proceeding pursuant to CPLR article 78 in the nature of prohibition, inter alia, to bar the People from relitigating certain matters previously determined in a proceeding in the Supreme Court, Kings County, entitled *People v White* under Indictment No. 3821/06, 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 proceeding is dismissed, without costs or disbursements.

This court does not have original subject matter jurisdiction to entertain this proceeding, as no “justice of the supreme court or . . . judge of the county court or the court of general sessions” was named as a respondent (CPLR 506[b][1]). Since subject matter jurisdiction

June 26, 2007

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cannot be waived, the proceeding must be dismissed (*see Matter of Nolan v Lungen*, 61 NY2d 788; CPLR 7804[b]; *cf. Matter of Law Offs. of Andrew F. Capoccia v Spitzer*, 270 AD2d 643, 644 n 2)

FLORIO, J.P., FISHER, CARNI and McCARTHY, JJ., concur.

ENTER:

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

James Edward Pelzer  
Clerk of the Court