

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

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ROBERT A. SPOLZINO, J.P.
PETER B. SKELOS
ANITA R. FLORIO
DANIEL D. ANGIOLILLO, JJ.

2007-09328

DECISION, ORDER & JUDGMENT

In the Matter of Alfredo Rodriguez, petitioner,
v Michael F. Mullen, etc., et al., respondents.

Alfredo Rodriguez, Albion, N.Y., petitioner pro se.

Andrew M. Cuomo, Attorney General, New York, N.Y. (Anthony J. Tomari of
counsel), for respondent Michael F. Mullen.

Thomas J. Spota, District Attorney, Riverhead, N.Y. (Rosalind C. Gray of counsel),
respondent pro se.

Proceeding pursuant to CPLR article 78 in the nature of mandamus, inter alia, to compel the respondent Michael F. Mullen, a Justice of the Supreme Court, Suffolk County, to vacate a judgment rendered August 9, 2006, which, upon remittitur from this Court, resented the defendant on his conviction of burglary in the second degree. Application by the petitioner to prosecute this proceeding as a poor person.

ORDERED that the application to prosecute this proceeding as a poor person is granted to the extent that the filing fee imposed by CPLR 8022(b) is waived, and the application is otherwise denied as academic; 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*

January 15, 2008

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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.

SPOLZINO, J.P., SKELOS, FLORIO and ANGIOLILLO, 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