

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

D20351  
Y/nl

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WILLIAM F. MASTRO, J.P.  
ROBERT A. LIFSON  
EDWARD D. CARNI  
WILLIAM E. McCARTHY, JJ.

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2008-07083

DECISION, ORDER & JUDGMENT

In the Matter of Hilary A. Best, petitioner, v Queens  
County Supreme Court, etc., respondent.

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Hilary A. Best, Forest Hills, N.Y., petitioner pro se.

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

Proceeding pursuant to CPLR article 78 in the nature of prohibition, inter alia, to prohibit the respondent Robert Kohm, a Justice of the Supreme Court, Queens County, from conducting a hearing pursuant to Correction Law article 6-C in the matter entitled *People v Best* pending in that court. 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.

"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 v Goldman*, 71 NY2d 564, 569; see, *Matter of Rush v Mordue*, 68 NY2d 348, 352). Similarly, the extraordinary remedy of mandamus will lie only to compel the performance of a ministerial act, and

August 21, 2008

Page 1.

MATTER OF BEST v QUEENS COUNTY SUPREME COURT

only when there exists a clear legal right to the relief sought (*see, Matter of Legal Aid Society of Sullivan County v Scheinman*, 53 NY2d 12, 16).

The petitioner here has failed to demonstrate a clear legal right to the relief sought.

MASTRO, J.P., LIFSON, 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