

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

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PETER B. SKELOS, J.P.
FRED T. SANTUCCI
WILLIAM E. McCARTHY
THOMAS A. DICKERSON, JJ.

2008-08542

DECISION, ORDER, & JUDGMENT

In the Matter of Leroy Whitley, petitioner, v
Matthew D’Emic, et al., respondents.

Leroy Whitley, Queens, N.Y., petitioner pro se.

Charles J. Hynes, District Attorney, Brooklyn, N.Y. (Leonard Joblove and Ann Bordley of counsel), respondent pro se and for respondent Jill Oziemblewski.

Proceeding pursuant to CPLR article 78 in the nature of prohibition, inter alia, to prohibit the respondents from proceeding with a criminal action entitled *People v Whitley*, pending in the Supreme Court, Kings County, under Indictment Number 12111-07. 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*)

December 23, 2008

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v Goldman, 71 NY2d 564, 569; see *Matter of Rush v Mordue*, 68 NY2d 348, 352). The petitioner has failed to demonstrate a clear legal right to the relief sought.

SKELOS, J.P., SANTUCCI, McCARTHY and DICKERSON, 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