

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

D21777
Y/kmg

_____AD3d_____

ANITA R. FLORIO, J.P.
HOWARD MILLER
EDWARD D. CARNI
ARIEL E. BELEN, JJ.

2008-08094

DECISION, ORDER & JUDGMENT

In the Matter of Reginald Thompson, petitioner,
v Richard L. Buchter, etc., et al., respondents.

Reginald Thompson, Wallkill, N.Y., petitioner pro se.

Andrew M. Cuomo, Attorney General, New York, N.Y. (Michael J. Keane of counsel; Christina Okereke on the memorandum), respondent pro se and for respondent Richard L. Buchter.

Proceeding pursuant to CPLR article 78 in the nature of prohibition, inter alia, to prohibit the respondent Richard L. Buchter, a Justice of the Supreme Court, Queens County, from resentencing the petitioner in a matter entitled *People v Thompson* pending in that court under Indictment No. 519/00. 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*)

January 20, 2009

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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.

FLORIO, J.P., MILLER, CARNI and BELEN, JJ., concur.

ENTER:

A handwritten signature in black ink, reading "James Edward Pelzer". The signature is written in a cursive style with a large, sweeping initial "J".

James Edward Pelzer
Clerk of the Court