

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

D22476  
Y/prt

\_\_\_\_\_AD3d\_\_\_\_\_

Submitted - February 17, 2009

REINALDO E. RIVERA, J.P.  
DAVID S. RITTER  
HOWARD MILLER  
THOMAS A. DICKERSON, JJ.

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2008-07191

DECISION & ORDER

In the Matter of Lu Po-Yen, appellant, v  
New York State Board of Parole, respondent.

(Index No. 53/08)

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Lu Po-Yen, Warwick, N.Y., appellant pro se.

Andrew M. Cuomo, Attorney General, New York, N.Y. (Michelle Aronowitz and  
Sasha Samberg-Champion of counsel), for respondent.

In a proceeding pursuant to CPLR article 78 to review a determination of the New York State Board of Parole dated October 16, 2007, denying the petitioner's application to be released on parole, the appeal is from a judgment of the Supreme Court, Orange County (Slobod, J.), dated April 28, 2008, which denied the petition and dismissed the proceeding.

ORDERED that the judgment is affirmed, without costs or disbursements.

The failure of the New York State Board of Parole to consider the sentencing minutes in denying the petitioner's application to be released on parole did not prejudice him (*see Galbreith v New York State Bd. of Parole*, 58 AD3d 731). As properly found by the Supreme Court, the examination of the sentencing minutes reveals that the sentencing court made no parole recommendation (*see Matter of Valerio v New York State Div. of Parole*, 59 AD3d 802; *Matter of*

March 24, 2009

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*Motti v Alexander*, 54 AD3d 1114, 1115; *Matter of Schettino v New York State Div. of Parole*, 45 AD3d 1086, 1087).

The petitioner's remaining contentions are without merit.

RIVERA, J.P., RITTER, MILLER 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