

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

D22607
W/kmg

_____AD3d_____

Submitted - January 15, 2009

A. GAIL PRUDENTI, P.J.
MARK C. DILLON
JOSEPH COVELLO
JOHN M. LEVENTHAL, JJ.

2008-00231

DECISION & ORDER

In the Matter of Anselmo Soto, Jr., appellant,
v Brian Fischer, etc., respondent.

(Index No. 5996/07)

Anselmo Soto, Jr., Beacon, N.Y., appellant pro se.

Andrew M. Cuomo, Attorney General, New York, N.Y. (Benjamin N. Gutman and
Laura R. Johnson of counsel), for respondent.

In a proceeding pursuant to CPLR article 78 to review a determination of the New York State Department of Correctional Services dated June 25, 2007, which, in effect, calculated the sentence of imprisonment that was imposed upon the petitioner on December 4, 1987, as running consecutively to certain sentences previously imposed, the petitioner appeals from a judgment of the Supreme Court, Dutchess County (Pagones, J.), dated November 28, 2007, which, in effect, denied the petition and dismissed the proceeding.

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

In 1987 the petitioner was sentenced, as a persistent felony offender, to an indeterminate prison term of 25 years to life, upon his conviction of conspiracy in the second degree. The sentencing minutes and the order of commitment were silent as to whether the sentence was to run concurrently with or consecutively to sentences previously imposed upon the petitioner in 1981 and 1984. The New York State Department of Correctional Services (hereinafter the DOCS) subsequently determined that the petitioner's 1987 sentence was to run consecutively to his 1981 and 1984 sentences, and the petitioner commenced this CPLR article 78 proceeding, seeking to annul that determination.

March 31, 2009

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Contrary to the petitioner's contention, the DOCS did not exceed its authority in determining that his sentences must run consecutively, pursuant to the mandatory provisions of Penal Law § 70.25(2-a) (*see People ex rel. Gill v Greene*, 12 NY3d 1). Accordingly, the Supreme Court properly, in effect, denied the petition and dismissed the proceeding.

PRUDENTI, P.J., DILLON, COVELLO and LEVENTHAL, 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