

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

D22649
W/kmg

_____AD3d_____

STEVEN W. FISHER, J.P.
HOWARD MILLER
RUTH C. BALKIN
ARIEL E. BELEN, JJ.

2008-10985

DECISION, ORDER & JUDGMENT

In the Matter of Jose Burgos, petitioner, v
James P. Griffin, etc., et al., respondents.

Jose Burgos, East Elmhurst, N.Y., petitioner pro se.

Andrew M. Cuomo, Attorney General, New York, N.Y. (Roberta L. Martin of
counsel), for respondent James P. Griffin.

Richard A. Brown, District Attorney, Kew Gardens, N.Y. (John M. Castellano, Jill
A. Gross-Marks, and Daniel Bresnahan of counsel), respondent pro se.

Proceeding pursuant to CPLR article 78 in the nature of prohibition to prohibit the respondents from proceeding with a criminal action entitled *People v Burgos*, pending in the Supreme Court, Queens County, under Indictment No. 91/08. Application by the petitioner to prosecute the proceeding as a poor person.

ORDERED that the application to prosecute the 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 on the merits, 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*

March 31, 2009

MATTER OF BURGOS v GRIFFIN

Page 1.

v Goldman, 71 NY2d 564, 569; see *Matter of Rush v Mordue*, 68 NY2d 348, 352; *Matter of Barton v Griffin*, _____AD3d_____, 2009 NY Slip Op 01213 [2d Dept 2009]).

Here, the petitioner has failed to demonstrate a clear legal right to the relief sought.

FISHER, J.P., MILLER, BALKIN and BELEN, 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