

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

D22826
Y/prt

_____AD3d_____

MARK C. DILLON, J.P.
ANITA R. FLORIO
DANIEL D. ANGIOLILLO
ARIEL E. BELEN, JJ.

DECISION, ORDER & JUDGMENT

2008-09100

In the Matter of Anthony Brownlee, petitioner,
v Robert C. Kohm, etc., et al., respondents.

Anthony Brownlee, East Elmhurst, N.Y., petitioner pro se.

Andrew M. Cuomo, Attorney General, New York, N.Y., respondent pro se and for
respondent Robert C. Kohm.

Proceeding, inter alia, pursuant to CPLR article 78 in the nature of mandamus to compel the respondent Robert C. Kohn, a Justice of the Supreme Court, Queens County, to resentence the petitioner in the matter entitled *People v Brownlee*, pending in that court under Indictment No. 10037/07, as a first-time offender rather than as a predicate felony offender. 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, without costs or disbursements.

April 28, 2009

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The extraordinary remedy of mandamus will lie only to compel the performance of a ministerial act and only when there exists a clear legal right to the relief sought (*see Matter of Legal Aid Society of Sullivan County v Scheinman*, 53 NY2d 12, 16). The petitioner has failed to demonstrate a clear legal right to the relief sought.

DILLON, J.P., FLORIO, ANGIOLILLO 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