

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

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_____AD3d_____

REINALDO E. RIVERA, J.P.
MARK C. DILLON
RUTH C. BALKIN
LEONARD B. AUSTIN, JJ.

2009-04001

DECISION, ORDER & JUDGMENT

In the Matter of Gilbert M. Martinez, petitioner,
v Robert Hanophy, etc., respondent.

Gilbert M. Martinez, Brooklyn, N.Y., petitioner pro se.

Andrew M. Cuomo, Attorney General, New York, N.Y. (Robert L. Martin of
counsel), for respondent.

Proceeding pursuant to CPLR article 78, inter alia, in the nature of mandamus to compel Robert Hanophy, a Justice of the Supreme Court, Queens County, to determine the petitioner's motion to dismiss Queens County Indictment No. 1558/08 and to turn over to the petitioner the grand jury minutes, and application by the petitioner for poor person relief.

ORDERED that the application for poor person relief is granted to the extent that the filing fee imposed by CPLR 8022(b) is waived, and the application is otherwise denied; and it is further,

ORDERED that the branch of the petition which is to compel Justice Hanophy to determine the petitioner's motion to dismiss the indictment is dismissed as academic, without costs or disbursements, as that motion was determined by the Supreme Court on May 12, 2009; and it is further,

ADJUDGED that the petition is otherwise denied and the proceeding is dismissed, without costs or disbursements.

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*

June 23, 2009

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Aid Socy. of Sullivan County v Scheinman, 53 NY2d 12, 16). The petitioner has failed to demonstrate a clear legal right to the relief sought by that branch of the petition which was to compel Justice Hanophy to turn over to the petitioner the grand jury minutes.

RIVERA, J.P., DILLON, BALKIN and AUSTIN, 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