

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

D24394
G/kmg

_____AD3d_____

STEVEN W. FISHER, J.P.
MARK C. DILLON
JOSEPH COVELLO
RANDALL T. ENG, JJ.

2009-05505

DECISION, ORDER & JUDGMENT

In the Matter of Dexter Murray, petitioner, v
Michael Pesce, etc., et al., respondents.

Dexter Murray, Fishkill, N.Y., petitioner pro se.

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

Proceeding pursuant to CPLR article 78 in the nature of mandamus, inter alia, to compel the respondent Michael Pesce, a Justice of the Supreme Court, Kings County, to vacate the sentence imposed upon the petitioner on April 12, 1984, under Indictment No. 3557/83, and 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.

The extraordinary remedy of mandamus will lie only to compel the performance of a ministerial act and only where there exists a clear legal right to the relief sought (*see Matter of Legal*

September 29, 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.

FISHER, J.P., DILLON, COVELLO and ENG, JJ., concur.

ENTER:

A handwritten signature in black ink, reading "James Edward Pelzer". The signature is written in a cursive, flowing style with a large initial "J".

James Edward Pelzer
Clerk of the Court