

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

D27392  
Y/hu

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Submitted - April 23, 2010

STEVEN W. FISHER, J.P.  
RUTH C. BALKIN  
SHERI S. ROMAN  
SANDRA L. SGROI, JJ.

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2009-08883

DECISION & ORDER

In the Matter of Joseph Martinez, appellant, v New  
York State Division of Parole, respondent.

(Index No. 3597/09)

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Joseph Martinez, Warwick, N.Y., appellant pro se.

Andrew M. Cuomo, Attorney General, New York, N.Y. (Michael S. Belohlavek and  
Marion R. Buchbinder of counsel), for respondent.

In a proceeding pursuant to CPLR article 78 to review a determination of the New York State Board of Parole dated June 17, 2008, denying his application to be released on parole, the petitioner appeals from a judgment of the Supreme Court, Orange County (Ritter, J.), dated August 18, 2009, which denied the petition and dismissed the proceeding.

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

A parole determination may be set aside only when the determination to deny the petitioner release on parole evinced ‘irrationality bordering on impropriety’ (*Matter of Russo v New York State Bd. of Parole*, 50 NY2d 69, 77; *see Matter of Silmon v Travis*, 95 NY2d 470, 476). The burden is on the petitioner to make a convincing demonstration of entitlement to such relief (*see Matter of Midgette v New York State Div. of Parole*, 70 AD3d 1039, 1040; *see Matter of Samuel v Alexander*, 69 AD3d 861). The petitioner failed to meet his burden in this case.

May 18, 2010

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The petitioner's remaining contentions are without merit.

FISHER, J.P., BALKIN, ROMAN and SGROI, JJ., concur.

ENTER:

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

James Edward Pelzer  
Clerk of the Court