

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

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_____AD3d_____

A. GAIL PRUDENTI, P.J.
REINALDO E. RIVERA
RUTH C. BALKIN
CHERYL E. CHAMBERS, JJ.

2010-02577

DECISION, ORDER & JUDGMENT

In the Matter of Kareem Lee, petitioner, v
Alan D. Marrus, etc., respondent.

Kareem Lee, Malone, N.Y., petitioner pro se.

Andrew M. Cuomo, Attorney General, New York, N.Y. (Charles F. Sanders of
counsel), for respondent.

Proceeding pursuant to CPLR article 78 in the nature of mandamus to compel the respondent, Alan D. Marrus, a Justice of the Supreme Court, Kings County, in effect, to vacate an order in an underlying case entitled *People v Lee*, Indictment No. 5957/03, in the Supreme Court, Kings County, dated September 2, 2008, denying the petitioner's motion, inter alia, to be resentenced, and to grant the motion, 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,

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 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.

PRUDENTI, P.J., RIVERA, BALKIN and CHAMBERS, 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