

**SUPREME COURT OF THE STATE OF NEW YORK**  
***Appellate Division, Fourth Judicial Department***

825

CA 08-01255

PRESENT: SCUDDER, P.J., MARTOCHE, FAHEY, CARNI, AND PINE, JJ.

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IN THE MATTER OF CHRISTOPHER YOUNG,  
PETITIONER-APPELLANT,

V

MEMORANDUM AND ORDER

MONROE COUNTY CLERK'S OFFICE AND CHERYL  
DINOLFO, RESPONDENTS-RESPONDENTS.

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CHRISTOPHER YOUNG, PETITIONER-APPELLANT PRO SE.

DANIEL M. DELAUS, JR., COUNTY ATTORNEY, ROCHESTER (PAUL D. FULLER OF  
COUNSEL), FOR RESPONDENTS-RESPONDENTS.

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Appeal from a judgment (denominated order) of the Supreme Court,  
Monroe County (John J. Ark, J.), entered March 14, 2008 in a  
proceeding pursuant to CPLR article 78. The judgment dismissed the  
petition.

It is hereby ORDERED that the judgment so appealed from is  
unanimously affirmed without costs.

Memorandum: Supreme Court properly dismissed the CPLR article 78  
petition seeking to compel respondents to provide petitioner with a  
copy of the verdict sheet used at his criminal trial. Respondents  
have asserted that, in response to petitioner's repeated requests for  
the verdict sheet, they searched their files relating to petitioner's  
case "page by page" and determined that they were not in possession of  
the verdict sheet. Thus, respondents established that they did not  
"fail[ ] to perform a duty enjoined upon [them] by law" (CPLR 7803  
[1]). We further conclude that respondents' responses to petitioner's  
requests were not "made in violation of lawful procedure, . . .  
affected by an error of law or . . . arbitrary and capricious or an  
abuse of discretion" (CPLR 7803 [3]). The inability of respondents to  
locate the verdict sheet in their files constitutes a rational basis  
for their failure to provide petitioner with a copy of that document  
(see generally *Matter of Pell v Board of Educ. of Union Free School  
Dist. No. 1 of Towns of Scarsdale & Mamaroneck, Westchester County*, 34  
NY2d 222, 231). Respondents are "under no obligation to furnish  
documents [that they] do[ ] not possess" (*Matter of Rivette v District  
Attorney of Rensselaer County*, 272 AD2d 648, 649).

Entered: June 5, 2009

Patricia L. Morgan  
Clerk of the Court