

IN THE SUPREME COURT OF THE STATE OF DELAWARE

IN THE MATTER OF THE                   §  
PETITION OF DARYL ANDRUS       § No. 596, 2007  
FOR A WRIT OF MANDAMUS       §

Submitted: December 10, 2007  
Decided: February 20, 2008

Before **STEELE**, Chief Justice, **HOLLAND**, and **BERGER**, Justices.

**ORDER**

This 20<sup>th</sup> day of February 2008, upon consideration of the petition of Daryl Andrus for an extraordinary writ of mandamus, it appears to the Court that:

(1) The petitioner, Daryl Andrus, seeks to invoke the original jurisdiction of this Court to issue a writ of mandamus to compel the Superior Court to hold a hearing on his pending petition for postconviction relief. The State of Delaware has filed a response and motion to dismiss Andrus' petition. After careful review, we find that Andrus's petition manifestly fails to invoke the original jurisdiction of this Court. Accordingly, the petition must be DISMISSED.

(2) In 1996, a Superior Court jury convicted Andrus and his co-defendant, Jeffrey Fogg, of first degree murder and first degree conspiracy.

This Court affirmed Andrus' convictions on direct appeal.<sup>1</sup> In 2001, Andrus, through counsel, filed his first motion for postconviction relief. One of the issues Andrus raised in his motion involved the trial testimony of a witness named Robert Richmond. Andrus alleged that the State had failed to disclose to defense counsel an agreement it had made with Richmond to secure his testimony. Due to his incarceration in another State, Richmond was unavailable to appear at the hearing on Andrus' postconviction motion. The Superior Court, therefore, did not rule on Andrus' claims regarding Richmond but instead indicated that it considered the claims to be "preserved for a future date if and when Richmond is transported back to Delaware."<sup>2</sup> The Superior Court denied all of Andrus' other claims for postconviction relief. This Court affirmed on appeal.<sup>3</sup>

(3) Andrus filed his second motion for postconviction relief in May 2007. The State filed a response to the motion on August 10, 2007. Thereafter, on August 24, 2007, the Superior Court asked the State to provide information on Richmond's whereabouts and the feasibility of having Richmond brought to Delaware. The defendant objected to the Superior Court's request. Nonetheless, the State filed its response to the

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<sup>1</sup> *Andrus v. State*, 1998 WL 736338 (Del. Oct. 1, 1998).

<sup>2</sup> *Andrus v. State*, 2003 WL 1387115, at \*8 (Del. Super. Mar. 12, 2003).

<sup>3</sup> *Andrus v. State*, 2004 WL 691922 (Del. Mar. 12, 2004).

Superior Court's request on September 18. Thereafter, the trial court deferred its decision on the need for an evidentiary hearing and gave Andrus until December 30 to file his reply to the State's answer. After requesting and receiving an extension, Andrus filed his reply on January 16, 2008. His petition and request for a hearing on the petition remain pending.

(4) Andrus filed his petition for a writ of mandamus arguing that the Superior Court erred in its August 24 request for more information about Richmond's whereabouts. Andrus contends that the Superior Court misinterpreted his position on the need to have Richmond testify at a postconviction hearing. Thus, Andrus seeks to have this Court compel the Superior Court to hold a hearing on his postconviction motion.

(5) This Court has authority to issue a writ of mandamus only when the petitioner can demonstrate a clear right to the performance of a duty, no other adequate remedy is available, and the trial court arbitrarily failed or refused to perform its duty.<sup>4</sup> An extraordinary writ will not be issued if the petitioner has another adequate and complete remedy at law to correct the act of the trial court that is alleged to be erroneous.<sup>5</sup>

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<sup>4</sup> *In re Bordley*, 545 A.2d 619, 620 (Del. 1988).

<sup>5</sup> *Canaday v. Superior Court*, 116 A.2d 678, 682 (Del. 1955).

(4) In this case, Andrus cannot demonstrate that he is entitled to the writ. In the first instance, Andrus cannot establish that the Superior Court has arbitrarily failed to act on his request for a postconviction hearing, as it has only been a few weeks since Andrus filed his reply. Moreover, Andrus cannot establish a clear right to a hearing on his postconviction motion because Superior Court Criminal Rule 61(h)(1) clearly gives the Superior Court discretion, after considering all relevant materials, to determine if a hearing is necessary. Furthermore, should the Superior Court deny his request for a hearing, Andrus may raise that ruling as issue on appeal if the Superior Court should deny his motion for postconviction relief. Thus, Andrus has an adequate remedy in the appellate process *if* the issue ever ripens.

NOW, THEREFORE, IT IS ORDERED that Andrus' petition for a writ of mandamus is DISMISSED.

BY THE COURT:

/s/ Myron T. Steele  
Chief Justice