

IN THE SUPREME COURT OF THE STATE OF DELAWARE

IN THE MATTER OF THE §
PETITION OF STEPHON SAMPLE § No. 234, 2008
FOR WRITS OF MANDAMUS §
AND PROHIBITION §

Submitted: May 27, 2008
Decided: August 6, 2008

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

ORDER

This 6th day of August 2008, upon consideration of the petition of Stephon Sample for extraordinary writs of mandamus and prohibition, it appears to the Court that:

(1) Sample seeks to invoke the original jurisdiction of this Court to issue writs of mandamus and prohibition to the Superior Court. The State of Delaware has filed a response and motion to dismiss Sample's petition. After careful review, we find that Sample's petition manifestly fails to invoke the original jurisdiction of this Court. Accordingly, the petition must be DISMISSED.

(2) On March 3, 2005, Sample pled guilty to once count of trafficking cocaine. The Superior Court sentenced him to twenty-five years at Level V imprisonment, to be suspended after serving ten years for one year at Level III probation. Sample did not appeal from his sentence. In

January 2006, he filed a petition for postconviction relief, which the Superior Court denied. We affirmed that decision on appeal.¹

(3) Sample filed his present petition requesting that a writ of mandamus be issued directing the Superior Court to docket and decide another postconviction petition he filed in that court. Sample also requests that a writ of prohibition be issued to the trial judge who took his plea to prohibit him from deciding Sample's latest postconviction petition. He requests that another judge be appointed to decide his motion.

(4) The Superior Court docket reflects that postconviction motions filed by Sample were docketed on February 1, 2008 and March 10, 2008, well before Sample filed his petition for a writ. The motions were referred to a Superior Court Commissioner and are subject to briefing that is due to be completed in September. Thus, to the extent Sample seeks a writ of mandamus to compel the docketing of his postconviction motion, his request is moot.

(5) Moreover, we have no jurisdiction to issue a writ of prohibition preventing an individual judge from ruling on Sample's motion. The purpose of a writ of prohibition is to keep a particular court within the limits of its

¹ *Sample v. State*, 2007 WL 3071418 (Del. Oct. 22, 2007).

own jurisdiction.² The writ is directed “to a court, not to an individual,” and it is used only in cases where a jurisdictional question is presented.³ There is no dispute that the Superior Court has jurisdiction to rule on Sample’s motion for postconviction relief. Sample is not entitled to a writ of prohibition directed to the trial judge.

NOW, THEREFORE, IT IS ORDERED that Sample’s petition for a writ of mandamus and a writ of prohibition is DISMISSED.

BY THE COURT:

/s/ Randy J. Holland
Justice

² *In re Hovey*, 545 A.2d 626, 629 (Del. 1988).

³ *Abrahams v. Superior Court*, 131 A.2d 662, 671 (Del. 1957).