

IN THE SUPREME COURT OF THE STATE OF DELAWARE

IN THE MATTER OF THE PETITION §
OF PETER KOSTYSHYN FOR A WRIT § No. 366, 2013
OF MANDAMUS §

Submitted: July 23, 2013
Decided: August 23, 2013

Before **BERGER, JACOBS**, and **RIDGELY**, Justices.

ORDER

This 23rd day of August 2013, upon consideration of the petition of Peter Kostyshyn for an extraordinary writ of mandamus and for the appointment of counsel and the State's response thereto, as well as the rule to show cause, it appears to the Court that:

(1) The petitioner, Peter Kostyshyn, seeks to invoke the original jurisdiction of this Court, pursuant to Supreme Court Rule 43, to issue a writ of mandamus directing the Superior Court to appoint him counsel and to hold fact-finding hearings on all motions pending before that trial court in Criminal Action Numbers 0908020496, 0902010151, and 0902010157.¹ Kostyshyn contends that he has never had the effective assistance of counsel in any of his

¹ Criminal Action Number 0908020496 is the only Superior Court case listed by Kostyshyn. Criminal Action Number 0902010151 is a Court of Common Pleas case that resulted in Kostyshyn's conviction on several charges in 2010. Criminal Action Number 0902010157 is a related Court of Common Pleas case in which Mr. Kostyshyn's sister, Patricia, was the defendant.

criminal proceedings. The State of Delaware has filed a motion to dismiss Kostyshyn's petition on the grounds that there is no showing that the Superior Court has arbitrarily failed or refused to perform its duty in Kostyshyn's case.

(2) In November 2010, Kostyshyn was convicted by a Superior Court jury of Aggravated Menacing, Possession of a Deadly Weapon During the Commission of a Felony, and Terroristic Threatening. The Superior Court sentenced him to a total period of twelve years at Level V incarceration, to be suspended after serving seven years in prison for decreasing levels of supervision. This Court affirmed his convictions and sentence on direct appeal.² Since that time, Kostyshyn has filed numerous unsuccessful motions, writs, appeals and petitions seeking further review of his convictions.³

(3) A writ of mandamus will only be issued if the complainant can show that: he has a clear right to the performance of a duty; that no other adequate remedy is available; and that the trial court has arbitrarily failed or refused to perform its duty.⁴ In this case, Kostyshyn has failed to establish that he has a clear right to the relief he has requested. Moreover, in our most recent order

² *Kostyshyn v. State*, 51 A.3d 416 (Del. 2012).

³ Kostyshyn's most recent petition was dismissed by this Court on July 16, 2013. *Kostyshyn v. State*, 2013 WL 3788235 (Del. July 16, 2013).

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

dismissing a similar, frivolous petition filed by Kostyshyn, we noted that Kostyshyn's excessive, frivolous filings are abusive and have placed an undue burden on the court system. We reiterate that the Clerk of this Court is directed not to docket any future original *pro se* filings (writs or notices of appeal) from Kostyshyn relating to any of his existing criminal cases unless those filings are accompanied by the required Supreme Court filing fee or a properly notarized, fully compliant motion to proceed *in forma pauperis*.

NOW, THEREFORE, IT IS ORDERED that the petition for the issuance of an extraordinary writ is DISMISSED.

BY THE COURT:

/s/ Jack B. Jacobs
Justice