

IN THE SUPREME COURT OF THE STATE OF DELAWARE

IN THE MATTER OF THE §
PETITION OF JOHN E. BROWN §
FOR A WRIT OF MANDAMUS § No. 356, 2000
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Submitted: August 30, 2000
Decided: September 11, 2000

Before **VEASEY**, Chief Justice, **WALSH** and **HOLLAND**, Justices

ORDER

This 11th day of September 2000, upon consideration of John E. Brown's petition for a writ of mandamus¹ and the State of Delaware's answer and motion to dismiss, it appears to the Court that:

(1) The petitioner, John E. Brown, filed a petition for a writ of mandamus requesting that this Court issue an order compelling the Superior Court to dismiss his current counsel and appoint new counsel. The State of Delaware, as the real party in interest, has filed a response and a motion to dismiss Brown's petition. After careful consideration of the parties' positions, we have determined that the State's motion to dismiss must be granted.

(2) It appears that Brown is incarcerated at Gander Hill awaiting trial. Brown filed a pro se motion requesting the Superior Court to appoint new counsel to represent him because his current counsel failed to raise a claim of

¹Supr. Ct. R. 43.

double jeopardy in the pre-trial proceedings. At Brown's final case review on July 10, 2000, the Superior Court denied the motion, stating that Brown could either retain his current counsel or represent himself with his current counsel on stand-by.

(3) This Court may issue a writ of mandamus to compel a lower court to perform a duty. However, as a condition precedent, it must be demonstrated to this Court that: the petitioner has a clear right to the performance of the duty; no other remedy is available; and the trial court has arbitrarily failed or refused to perform its duty.²

(4) Brown is not entitled to relief because he has failed to demonstrate that he has a clear right to the appointment of new counsel and that the Superior Court has arbitrarily failed or refused to appoint new counsel in violation of its duty. This Court will not issue a writ of mandamus "to compel a trial court . . . to decide a matter in a particular way"³

NOW, THEREFORE, IT IS ORDERED that the State's motion to dismiss is GRANTED. The petition for a writ of mandamus is DISMISSED.

BY THE COURT:

s/Joseph T. Walsh

²*In re Hyson*, Del. Supr., 649 A.2d 807, 808 (1994).

³*In re Bordley*, Del. Supr., 545 A.2d 619, 620 (1988).

Justice