

IN THE SUPREME COURT OF THE STATE OF DELAWARE

IN RE THE PETITION OF §
STEVEN D. HUMES FOR A WRIT § No. 99, 2006
OF MANDAMUS §
§
§

Submitted: March 14, 2006

Decided: June 5, 2006

Before **STEELE**, Chief Justice, **JACOBS** and **RIDGELY**, Justices

ORDER

This 5th day of June 2006, it appears to the Court that:

(1) The petitioner, Steven D. Humes, seeks to invoke this Court's original jurisdiction to issue an extraordinary writ of mandamus¹ to direct the Superior Court to deny the motion of the State of Delaware to vacate the dismissal of a criminal charge against Humes and, also, to direct the Attorney General to investigate the victim of the criminal charge. The State of Delaware has filed an answer requesting that Humes' petition be dismissed. We find that Humes' petition manifestly fails to invoke the original jurisdiction of this Court. Accordingly, the petition must be dismissed.

(2) In April 2004, the State of Delaware charged Humes in the Court of Common Pleas with Misuse of Computer System Information.

¹ Del. Const. art. IV, § 11(6); Supr. Ct. R. 43.

Humes was convicted of that charge. In November 2004, Humes filed a timely appeal of his conviction to the Superior Court. The State of Delaware subsequently entered a dismissal of the charge, which it then moved to vacate. The Superior Court appointed counsel to represent Humes and, following briefing, granted the State's motion.

(3) A writ of mandamus is an extraordinary remedy issued by this Court to compel a trial court to perform a duty.² As a condition precedent to the issuance of the writ, Humes must demonstrate that: he has a clear right to the performance of the duty; no other adequate remedy is available; and the trial court has arbitrarily failed or refused to perform its duty.³

(4) There is no basis for the issuance of a writ of mandamus in this case. First, while Humes filed his petition pro se, the record reflects that he is still represented by appointed counsel and, moreover, has not been granted permission to participate as co-counsel in his own representation. As such, Humes was without authority to file the instant petition.⁴ Second, a mandamus petition may not be used to compel a trial court to decide a matter in a particular way.⁵ In essence, that is the relief requested by Humes in his petition. Third, this Court's jurisdiction to issue a writ of mandamus

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

³ *Id.*

⁴ *In re Haskins*, 551 A.2d 65, 66 (Del. 1988).

⁵ *In re Bordley*, 545 A.2d at 620.

is limited to instances where the respondent is a trial court or a judicial officer.⁶ Because the Attorney General is not a judicial officer,⁷ this Court has no jurisdiction to issue a writ of mandamus directing the Attorney General to perform a duty.

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

BY THE COURT:

/s/Henry duPont Ridgely
Justice

⁶ *In re Hitchens*, 600 A.2d 37, 38 (Del. 1991).

⁷ *In re Watson*, 2003 WL 22416060 (Del. Supr.)