

IN THE SUPREME COURT OF THE STATE OF DELAWARE

IN THE MATTER OF THE §
PETITION OF BRYAN M. § No. 84, 2013
BROCHU FOR A WRIT OF §
MANDAMUS §

Submitted: March 18, 2013

Decided: April 9, 2013

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

ORDER

This 9th day of April 2013, it appears to the Court that:

(1) The petitioner, Bryan M. Brochu, seeks to invoke this Court's original jurisdiction to issue an extraordinary writ of mandamus¹ to direct the Superior Court to rule on his motion to compel that he claims to have filed on December 29, 2012. The State requests that Brochu's petition be dismissed. We find that Brochu's petition manifestly fails to invoke the original jurisdiction of this Court. Accordingly, the petition must be dismissed.

(2) In 2010, Brochu pled guilty in the Superior Court to Assault in the First Degree and Possession of a Deadly Weapon During the Commission of a Felony. He was sentenced to a total of 22 years of Level V

¹ Del. Const. art. IV, §11(5); SUPR. CT. R. 43.

incarceration, to be suspended after 17 years for probation. We affirmed on direct appeal.²

(3) A writ of mandamus is an extraordinary remedy issued by this Court to compel a trial court to perform a duty.³ As a condition precedent to the issuance of the writ, the petitioner must demonstrate that: (a) he has a clear right to the performance of the duty; (b) no other adequate remedy is available, and (c) the trial court has arbitrarily failed or refused to perform its duty.⁴ This Court will not issue a writ of mandamus to compel a trial court to perform a particular judicial function, to decide a matter in a particular way, or to dictate control of its docket.⁵

(4) There is no basis for the issuance of a writ of mandamus in this case. First, the Superior Court docket does not reflect that Brochu filed a motion to compel on or about December 29, 2012. The docket instead reflects that Brochu filed his motion on March 11, 2013, after he had filed the instant petition for a writ of mandamus on February 27, 2013. Second, the passage of several weeks since Brochu's motion was referred to the

² *Brochu v. State*, 38 A.3d 1254, 2012 WL 566770 (Del. Feb. 21, 2012) (TABLE).

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

⁴ *Id.*

⁵ *Id.*

Superior Court judge is not evidence of the judge's arbitrary failure or refusal to rule on the motion.⁶ In the absence of any evidence that the Superior Court has failed or refused to perform a clear duty owed to Brochu, we conclude that the petition for a writ of mandamus must be dismissed.

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

BY THE COURT:

/s/ Jack B. Jacobs
Justice

⁶ See *In re Brookins*, 736 A.2d 204, 206 (Del. 1999).