

Cite as 2009 Ark. 470

ARKANSAS SUPREME COURT

No. 08-1292

Opinion Delivered October 1, 2009

PATRICK L. SHERMAN
Appellant

v.

LARRY NORRIS, DIRECTOR,
ARKANSAS DEPARTMENT OF
CORRECTION
Appellee

PRO SE PETITIONS AND AMENDED
PETITION FOR WRIT OF
MANDAMUS [CIRCUIT COURT OF
JEFFERSON COUNTY, CV 2008-630,
HON. ROBERT H. WYATT, JR.,
JUDGE]

PETITIONS AND AMENDED
PETITION FOR WRIT OF
MANDAMUS TREATED AS
MOTIONS FOR RECONSIDERATION
OF DISMISSAL OF APPEAL AND
DENIED.

PER CURIAM

On April 2, 2009, this court dismissed the appeal of appellant, Patrick L. Sherman, in the instant matter. *Sherman v. Norris*, 2009 Ark. 181 (unpublished per curiam). Appellant sought an appeal from an order that denied a petition for writ of habeas corpus that he filed in circuit court. Two pending motions, for appointment of counsel and for recovery of damages and fees as a sanction under Arkansas Rule of Civil Procedure 11,¹ were considered moot as the appeal had been dismissed.

Now before us are appellant's two pro se petitions and amended petition for writ of mandamus. We treat all three pleadings as motions for reconsideration of our dismissal of the

¹We noted in the dismissal that the motion for sanctions also appeared to seek sanctions pursuant to Arkansas Rule of Appellate Procedure—Civil 11.

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appeal.

In the first petition for writ of mandamus, appellant alleges that this court violated his right to an appeal, under Amendment 80, § 11, to the Arkansas Constitution, by dismissing the matter. Next, appellant avers that the opinion should be struck as it was not signed by the court, citing Arkansas Rule of Civil Procedure 11, it was rendered in bad faith, and it cannot be cited as case-law authority by appellant based upon Arkansas Supreme Court Rule 5-2. In addition, appellant argues that the decision failed to consider all issues raised by appellant.

In the second petition for writ of mandamus, appellant complains that our Criminal Justice Coordinator erroneously treated the first petition for writ of mandamus as a motion for reconsideration. He contends therein that all members of this court should recuse from this case as the first petition for writ of mandamus is directed toward all seven justices who now have an interest in the outcome of that petition, citing Constitutional Amendment 80, § 12. For relief, appellant prays that the first petition for writ of mandamus not be filed as a motion for reconsideration, but as a petition for writ of mandamus, that all members of the court recuse from this matter, and for the Chief Justice to certify to the Governor, pursuant to Amendment 80, § 13, to the Arkansas Constitution, that seven special justices should be appointed to consider the petition for writ of mandamus.

In the amended petition for writ of mandamus, appellant complains that the Criminal Justice Coordinator and each justice of this court violated numerous laws and engaged in criminal activity for treating the prior petitions for writ of mandamus as motions for reconsideration. He claims the right to file a mandamus action against the justices, and maintains that the appeal in his criminal case

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should have been reversed, which was the basis for appellant's habeas petition filed in circuit court.

As authority for the various allegations, appellant relies upon a plethora of constitutional provisions, statutes and rules in support of his arguments, and seeks myriad relief therein.² A number of these arguments and grounds for relief are also contained in the second petition for writ of mandamus.

Notwithstanding the extensive allegations, the gravamen of appellant's mandamus petitions is that the instant appeal should not have been dismissed, and that the underlying criminal judgment of conviction should be reversed. The petitions for writ of mandamus are thus properly considered to be requests for reconsideration of the order that dismissed the appeal. Appellant has however failed to meet his burden of demonstrating that there was some error of fact or law in the decision that would merit reconsideration.

²Appellant cites the following authority: Arkansas Constitution, article 2, §13 (declaring a citizens' right to legal redress for wrongs committed), and article 7, § 49 (regarding the form of criminal indictments); Arkansas Constitutional Amendment 80, §2(c) (requiring at least four justices of this court to agree when rendering an opinion), and §§ 11 – 13 (giving the right to an appeal, regarding the temporary disqualification of a judge, and regarding the assignment of special and retired judges); Arkansas Code Annotated, § 5-11-102(a)(7) (Repl. 2006) (kidnapping), § 5-51-204 (Repl. 2005) (conspiring to usurp the government), and § 5-54-105 (Repl. 2005) (obstructing governmental operations by hindering apprehension, prosecution, conviction, or punishment of another); Supreme Court Administrative Order No. 1 (regarding special justices), No. 2(a) (setting out case numbering and docketing by lower-court clerks), No. 11 (pertaining to professional responsibility for interpreters in the judiciary), and No. 16 (assigning judges); Arkansas Rule of Appellate Procedure—Civil 2 (describing appealable matters); Arkansas Code of Judicial Conduct Canon 1 (upholding the integrity and independence of the judiciary), Canon 2(A) and (B) (avoiding impropriety and the appearance of impropriety in judicial activities), and Canon 3(B)(1), (2), (5) and (7), 3(D)(1), 3(E)(1)(c) and (d)(i) (performing judicial duties impartially and diligently).

For relief, appellant asks that the petitions be filed as an independent mandamus action with a new case number, that the court allow appellant to proceed *in forma pauperis* in that matter, that an attorney be appointed to represent appellant, and that a request be made to the Governor to appoint seven special justices to hear appellant's mandamus petition. He also prays that the Criminal Justice Coordinator and the court be enjoined from dismissing appellant's instant appeal, from issuing unpublished opinions in his appellate cases, from ruling on appellant's mandamus petitions, from declining to reverse the judgment of conviction in his criminal case, and from refusing to recuse from the mandamus action.

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In dismissing the appeal, we set out the requirements for granting a petition for writ of habeas corpus. *Friend v. Norris*, 364 Ark. 315, 219 S.W.3d 123 (2005) (per curiam). Further, we held that appellant failed to meet his burden of showing that he was entitled to habeas corpus relief. *Young v. Norris*, 365 Ark. 219, 226 S.W.3d 797 (2006) (per curiam). As appellant has not established that the dismissal was factually or legally erroneous, the motions for reconsideration of the order that dismissed appellant's appeal are denied.

Moreover, although appellant insists that he is absolutely entitled to seek mandamus relief, the writ is not a writ of right but is within the judicial discretion of the court to issue or withhold. *Robertson v. Norris*, 360 Ark. 591, 203 S.W.3d 82 (2005). The potential availability of such an extraordinary writ does not, in itself, establish or create a right that does not already exist. *Id.* The party applying for it must show a specific and clear legal right to the writ, as well as the absence of any other adequate remedy. *Id.* (citing *Eason v. Erwin*, 300 Ark. 384, 781 S.W.2d 1 (1989)). Appellant shows no such right to mandamus relief, and further has an adequate remedy in our reconsideration of the prior decision.

Petitions and amended petition for writ of mandamus treated as motions for reconsideration of dismissal of appeal and denied.