

July 5, 2001

Jernel Ross  
S.C.I.  
P.O. Box 500  
Georgetown, DE 19947

RE: Ross v. Haller, C.A. No. 01M-05-016

Dear Mr. Ross:

Pending before the Court is the petition of Jernel Ross ("petitioner") seeking a writ of mandamus. Petitioner has named as respondent, Karl Haller, Esquire, who was his trial attorney in the case of State v. Ross, Def. ID# 9904016181. Petitioner also has filed a motion to proceed in forma pauperis.

Petitioner's motion to proceed in forma pauperis meets the requisites of 10 Del. C., ch. 88. He has established that he is indigent. Accordingly, I grant the motion to proceed in forma pauperis.

However, the matter does not end with my granting of that motion. I now must examine the petition seeking a writ of mandamus to determine if the action should be allowed to proceed. 10 Del. C. § 8803(a), (b).<sup>1</sup> If the petition fails to state a claim upon which relief

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<sup>1</sup>In 10 Del. C. § 8803(a) and (b), it is provided:

may be granted, then it is deemed legally frivolous. See Gibbs v. Hewes, Del. Super., C.A. No. 98C-03-294, Del Pesco, J. (April 16, 1998). If the Court determines the petition is faulty because it is legally frivolous, malicious or factually frivolous, then the Court dismisses it. 10 Del. C. § 8803. If not, it allows service of process to issue. Id.

In this case, petitioner requests that Mr. Haller be ordered to produce the transcripts of all proceedings involving the case of State v. Ross, Def. ID# 9904016181. After petitioner's conviction in that case, Mr. Haller filed an appeal on petitioner's behalf. Mr. Haller requested that only those portions of the proceedings pertinent to the appeal be transcribed. The Supreme Court affirmed the conviction. State v. Ross, Del. Supr., No. 232, 2000, Walsh, J. (February 6, 2001). Since that affirmance, petitioner has written this Court

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(a) In all cases in which a court has granted an individual leave to proceed in forma pauperis, the court shall issue an order authorizing the filing of the complaint and establishing the amount of court costs and filing fees to be paid. The court may, in its discretion, establish a schedule for the payment of the costs and fees.

(b) Upon establishing the amount of fees and costs to be paid, the court shall review the complaint. Upon such review, the complaint shall be dismissed if the court finds the action is factually frivolous, malicious or, upon a court's finding that the action is legally frivolous and that even a pro se litigant, acting with due diligence, should have found well settled law disposing of the issue(s) raised. Any order of dismissal shall specifically identify whether the complaint was factually frivolous, legally frivolous and/or malicious. Service of process shall not issue unless and until the court grants leave following its review.

several times requesting that he be provided transcripts of all proceedings in the above-referenced criminal matter and indicating that he wishes to file a postconviction motion. The Court has informed petitioner several times that, as set forth in State v. Bordley, Del. Super., Cr.A. No. IK85-05-0002, Steele, J. (October 26, 1989), he must articulate specific allegations of constitutional infirmity and establish the need for the transcripts before he will be provided them. Petitioner has not followed these instructions; instead, he has filed this petition seeking a writ of mandamus.

As the Supreme Court explained in Guy v. Greenhouse, Del. Supr., No. 285, 1993, Walsh, J. (December 30, 1993):

Under Delaware law, the basis for issuance and the scope of relief available through a writ of mandamus under Delaware law are both quite limited. Mandamus is issuable not as a matter of right, but only in the exercise of sound judicial discretion. Moreover, when directed to an administrative agency or public official, mandamus will issue only to require performance of a clear legal or ministerial duty. For a duty to be ministerial and thus enforceable by mandamus, the duty must be prescribed with such precision and certainty that nothing is left to discretion or judgment. [Citations omitted.]

Accord Taylor v. State, Del. Supr., 716 A.2d 975 (1998); Washington v. State, Del. Supr., 713 A.2d 932 (1998). In addition, a writ of mandamus is inappropriate where a petitioner has an adequate remedy at law available to him. Taylor v. State, *supra*.

In this case, Mr. Haller does not fall within the category of respondents subject to mandamus. In addition, there is no ministerial duty to provide the requested transcripts. Finally, petitioner has an alternative remedy; he may comply with the requisites of State v. dismisses the petition with prejudice.

IT IS SO ORDERED.

Very truly yours,

Richard F. Stokes

cc: Prothonotary's Office  
State v. Ross, Def. ID# 9904016181