

IN THE SUPREME COURT OF THE STATE OF DELAWARE

IN THE MATTER OF THE                   §  
PETITION OF ANDRE D.               § No. 115, 2012  
JOHNSON FOR A WRIT OF           §  
MANDAMUS                           §

Submitted: March 26, 2012

Decided: March 29, 2012

Before **HOLLAND, BERGER** and **JACOBS**, Justices

**ORDER**

This 29<sup>th</sup> day of March 2012, it appears to the Court that:

(1) The petitioner, Andre D. Johnson, seeks to invoke this Court's original jurisdiction to issue an extraordinary writ of mandamus<sup>1</sup> to compel the Superior Court to grant his motion for correction of his criminal sentence. The State of Delaware has filed an answer requesting that Johnson's petition be dismissed. We find that Johnson's petition manifestly fails to invoke the original jurisdiction of this Court. Accordingly, the petition must be dismissed.

(2) The record before us reflects that, in May 1994, Johnson was found guilty by a Superior Court jury of two counts each of Burglary in the Second Degree, Conspiracy in the Second Degree and Misdemeanor Theft, and one count each of Theft of a Firearm, Resisting Arrest, Possession of a

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<sup>1</sup> Del. Const. art. IV, §11(5); Supr. Ct. R. 43.

Deadly Weapon By a Person Prohibited, Carrying a Concealed Deadly Weapon and Disregarding a Traffic Device. The Superior Court granted the State's motion to sentence Johnson as a habitual offender to life in prison on one of his two burglary convictions.<sup>2</sup> After unsuccessfully moving for modification or correction of his sentence on several occasions, Johnson now seeks mandamus relief to compel the Superior Court to vacate its life sentence on the ground that his habitual offender status must be applied to both of his burglary convictions, or neither.

(3) A writ of mandamus is an extraordinary remedy issued by this Court to compel a trial court to perform a duty.<sup>3</sup> As a condition precedent to the issuance of the writ, the defendant 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.<sup>4</sup> This Court will not issue a writ of mandamus to compel a trial court to perform a particular judicial function, decide a matter in a particular way or control its docket in a particular way.<sup>5</sup>

(4) There is no basis for the issuance of a writ of mandamus in this case. This Court will not issue a writ of mandamus to compel the Superior

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<sup>2</sup> Del. Code Ann. tit. 11, §4214(b).

<sup>3</sup> *In re Bordley*, 545 A.2d 619, 620 (Del. 1988).

<sup>4</sup> *Id.*

<sup>5</sup> *Id.*

Court to sentence a defendant in a particular way. Moreover, Johnson has availed himself of the alternative remedy, albeit unsuccessfully, of moving the Superior Court for correction and/or modification of his sentence. Finally, this Court has previously ruled, in an appeal from the Superior Court's denial of one of Johnson's motions for correction of sentence,<sup>6</sup> that the State had the discretion to seek habitual offender status in connection with one, rather than both, of Johnson's burglary convictions.<sup>7</sup> As such, Johnson bases his argument in support of his instant petition on a faulty legal premise. Thus, for all of the above reasons, Johnson's 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/ Carolyn Berger  
Justice

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<sup>6</sup> *Johnson v. State*, Del. Supr., No. 275, 2008, Steele, C.J. (Dec. 11, 2008).

<sup>7</sup> *Id.*