

IN THE SUPREME COURT OF THE STATE OF DELAWARE

IN THE MATTER OF THE §
PETITION OF STEPHON SAMPLE § No. 36, 2009
FOR A WRIT OF MANDAMUS §

Submitted: January 30, 2009
Decided: February 18, 2009

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

ORDER

This 18th day of February 2009, it appears to the Court that:

(1) The petitioner, Stephon Sample, seeks to invoke this Court's original jurisdiction to issue an extraordinary writ of mandamus¹ to compel the Superior Court to order the Prothonotary to provide him with a copy of his updated Superior Court docket sheet and the Superior Court's March 2, 2005 order denying his motion to suppress. The State of Delaware has filed an answer requesting that Sample's petition be dismissed. We find that Sample's petition manifestly fails to invoke the original jurisdiction of this Court. Accordingly, the petition must be **DISMISSED**.

(2) On March 2, 2005, the Superior Court denied Sample's pretrial suppression motion. Later that month, Sample, with the assistance of counsel, pleaded guilty to Trafficking in Cocaine. He was sentenced to 25 years imprisonment at Level V, to be suspended after 10 years for 1 year of Level III

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

probation. On October 22, 2007, this Court affirmed the Superior Court's denial of Sample's postconviction motion.² On October 26, 2007, this Court dismissed Sample's untimely appeal of the Superior Court's denial of his pretrial suppression motion.³

(3) A writ of mandamus is an extraordinary remedy issued by this Court to compel a trial court to perform a duty.⁴ As a condition precedent to the issuance of the writ, a 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.⁵

(4) There is no basis for the issuance of a writ of mandamus in this case. Because the State attached a copy of Sample's updated docket sheet to its answer, which was served upon Sample, that portion of Sample's claim is moot. Moreover, because Sample's voluntary guilty plea constituted a waiver of any claim relating to his suppression hearing, he has not shown any need for a transcript of his suppression hearing. As such, he has failed to demonstrate that the Superior Court has arbitrarily failed or refused to perform a duty owed to him.

² *Sample v. State*, Del. Supr., No. 278, 2007, Jacobs, J. (Oct. 22, 2007). We affirmed on the ground that Sample's voluntary guilty plea constituted a waiver of his claim of ineffective assistance of counsel in connection with his earlier suppression hearing. *Downer v. State*, 543 A.2d 309, 312-13 (Del. 1988).

³ *Sample v. State*, Del. Supr., No. 507, 2007, Jacobs, J. (Oct. 26, 2007).

⁴ *In re Bordley*, 545 A.2d 619, 620 (Del. 1988).

⁵ *Id.*

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

BY THE COURT:

/s/ Henry duPont Ridgely
Justice