

IN THE SUPREME COURT OF THE STATE OF DELAWARE

IN THE MATTER OF THE                   §  
PETITION OF JAMES ARTHUR       § No. 299, 2010  
BIGGINS FOR A WRIT OF           §  
MANDAMUS

Submitted: June 15, 2010

Decided: July 21, 2010

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

**ORDER**

This 21<sup>st</sup> day of July 2010, upon consideration of the petition of James Arthur Biggins for an extraordinary writ of mandamus and the State's response thereto, it appears to the Court that:

(1) The petitioner, James Arthur Biggins, seeks to invoke the original jurisdiction of this Court to issue a writ of mandamus to compel the Attorney General of the State of Delaware to file a response to a pending petition for a writ of mandamus that Biggins filed in the Superior Court in C.A. No. N10M-02-064. The State of Delaware has filed a response and motion to dismiss Biggins' petition in this Court. After careful review, we find that Biggins' petition manifestly fails to invoke the original jurisdiction of this Court. Accordingly, the petition must be **DISMISSED**.

(2) The Superior Court docket reflects that Biggins filed his mandamus petition in that court on February 1, 2010. On February 24,

2010, the Superior Court granted Biggins' motion to proceed *in forma pauperis* and directed that service of process be issued to the respondents, including the Attorney General and many State employees and officials within the Department of Correction. After being served with Biggins' petition, the respondents filed a motion to revoke Biggins' *in forma pauperis* status on May 18, 2010. The trial judge set June 21, 2010 as the deadline for Biggins to file his response to the motion. The motion remains pending decision before the Superior Court.

(3) Biggins filed his petition for an extraordinary writ of mandamus in this Court on May 20, 2010.<sup>1</sup> Biggins requests that a writ be issued compelling the respondents in his Superior Court case to file a response to the writ he has pending in the trial court. The State has moved to dismiss Biggins' current petition on the ground that it fails to invoke the original jurisdiction of this Court. We agree.

(4) This Court has authority to issue a writ of mandamus to a trial court only when the petitioner can demonstrate a clear right to the performance of a duty, no other adequate remedy is available, and the trial

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<sup>1</sup> Biggins filed a document entitled "Petitioner's Opening Brief for an Order of Writ of Mandamus" on April 30, 2010. Because Biggins had no case pending in this Court for which an opening brief was due, his "Opening Brief" was returned to him. Biggins re-filed his opening brief on May 20, 2010 asking that it be treated as a petition for an extraordinary writ.

court arbitrarily failed or refused to perform its duty.<sup>2</sup> An extraordinary writ will not be issued if the petitioner has another adequate and complete remedy at law to correct the act of the trial court that is alleged to be erroneous.<sup>3</sup> More importantly, the Court's jurisdiction to issue an extraordinary writ is limited to instances when the respondent is a court or judge thereof.<sup>4</sup> In this case, the Court has no original jurisdiction to issue a writ of mandamus compelling the Attorney General and Department of Correction employees to respond to Biggins' petition pending before the Superior Court.<sup>5</sup>

(5) To the extent that Biggins is requesting that the Superior Court be compelled to order the respondents to answer his petition, Biggins cannot demonstrate that he is entitled to the writ. In the first instance, Biggins cannot establish that the Superior Court has arbitrarily failed to act in his case. It has been only a few weeks since the June 21 deadline for Biggins to respond to the motion to revoke his *in forma pauperis* status. The outcome of that motion may affect the outcome of his petition for mandamus. The passage of only a few weeks does not reflect an arbitrary refusal to act by the

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

<sup>3</sup> *Canaday v. Superior Court*, 116 A.2d 678, 682 (Del. 1955).

<sup>4</sup> *In re Hitchens*, 600 A.2d 37, 38 (Del. 1991).

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

Superior Court. In the absence of a clear showing of an arbitrary refusal to act, this Court will not issue a writ of mandamus to compel the Superior Court to perform a particular judicial function, to decide a matter in a particular way, or to dictate the control of its docket.<sup>6</sup>

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

BY THE COURT:

/s/ Myron T. Steele  
Chief Justice

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<sup>6</sup> *In re Bordley*, 545 A.2d at 620.