

IN THE SUPREME COURT OF THE STATE OF DELAWARE

IN THE MATTER OF THE §
PETITION OF FREDERICK W. § No. 340, 2010
SMITH, JR., FOR A WRIT OF §
MANDAMUS. § C.A. No. N10C-03-234

Submitted: June 21, 2010
Decided: August 19, 2010

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

ORDER

This 19th day of August 2010, it appears to the Court:

(1) Frederick W. Smith, Jr., seeks to invoke this Court's original jurisdiction to issue a writ of mandamus to compel the Superior Court to conduct a jury trial on his civil complaint.¹ The State of Delaware has filed an answer requesting that the petition be dismissed.

(2) A writ of mandamus is an extraordinary remedy issued by this Court to compel a trial court to perform a duty.² By order dated June 30, 2010, the Superior Court dismissed Smith's civil complaint. Smith's appeal from that order is pending before the Court.³ There is no basis for the issuance of a writ of mandamus in this case because that issue is now moot.

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

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

³ *Smith v. Salas*, Del. Supr., No. 438, 2010.

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

BY THE COURT:

/s/ Randy J. Holland
Justice