## IN THE SUPREME COURT OF THE STATE OF DELAWARE

IN THE MATTER OF THE PETITION OF ROGER L. JOHNSON FOR A WRIT OF MANDAMUS §
§ No. 723, 2010
§ Cr. ID No. 9908000065
§

Submitted: November 23, 2010 Decided: December 20, 2010

Before STEELE, Chief Justice, HOLLAND and BERGER, Justices

## <u>ORDER</u>

This 20th day of December 2010, it appears to the Court that:

(1) The petitioner, Roger L. 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 postconviction relief on the ground that the trial judge incorrectly instructed the jury at his criminal trial. Johnson also requests that his current sentence be vacated, a new trial be scheduled, bail be granted pending trial, and a plea to a lesser-included offense with a sentence to time served be considered by the prosecutor. 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.

<sup>&</sup>lt;sup>1</sup> Del. Const. art. IV, §11(6); Supr. Ct. R. 43.

(2) The record before us reflects that, in May 2000, Johnson was found guilty by a Superior Court jury of two counts each of Robbery in the First Degree and Possession of a Firearm During the Commission of a Felony, and one count of Conspiracy in the Second Degree. He was sentenced as a habitual offender to a total of eighty years at Level V incarceration. This Court affirmed Johnson's convictions on direct appeal.<sup>2</sup> Thereafter, Johnson filed his first motion for postconviction relief. This Court affirmed the Superior Court's denial of the motion.<sup>3</sup> Johnson has filed a second motion for postconviction relief in the Superior Court, which is pending at this time.

(3) A writ of mandamus is an extraordinary remedy issued by this Court to compel a trial court to perform a duty.<sup>4</sup> As a condition precedent to the issuance of the writ, the 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.<sup>5</sup> This Court will not issue a writ of mandamus to compel a trial court

<sup>&</sup>lt;sup>2</sup> Johnson v. State, Del. Supr., No. 578, 2000, Steele, J. (June 18, 2002).

<sup>&</sup>lt;sup>3</sup> Johnson v. State, Del. Supr., No. 517, 2007, Berger, J. (Apr. 21, 2008).

<sup>&</sup>lt;sup>4</sup> In re Bordley, 545 A.2d 619, 620 (Del. 1988).

<sup>&</sup>lt;sup>5</sup> Id.

to perform a particular judicial function, to decide a matter in a particular way or to dictate control of its docket.<sup>6</sup>

(4) There is no basis for the issuance of a writ of mandamus in this case. Johnson has failed to demonstrate a clear right to the performance of a duty that the Superior Court has arbitrarily failed or refused to perform. Moreover, Johnson has improperly asked this Court to dictate to the Superior Court how it should decide a particular matter. Finally, Johnson has failed to demonstrate that no other adequate remedy is available to him, since his second motion for postconviction relief is now pending in the Superior Court.

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

BY THE COURT:

<u>/s/ Randy J. Holland</u> Justice

<sup>&</sup>lt;sup>6</sup> In re Brookins, 736 A.2d 204, 206 (Del. 1999).