

IN THE SUPREME COURT OF THE STATE OF DELAWARE

IN THE MATTER OF THE                   §  
PETITION OF DERIOUS               § No. 153, 2013  
JOHNSON FOR A WRIT OF           §  
MANDAMUS                           §

Submitted: April 5, 2013  
Decided: April 10, 2013

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

**ORDER**

This 10<sup>th</sup> day of April 2013, it appears to the Court that:

(1) The petitioner, Derious 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 permit him to file objections to a Commissioner's report in connection with his latest postconviction motion in Cr. A. No. 9709002535. 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 Superior Court docket in Cr. A. No. 9709002535 reflects that the Commissioner filed a report on February 6, 2013. The docket also reflects that Johnson's objections to the Commissioner's report were filed on

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

February 20, 2013, seven days prior to the filing of the Superior Court's order denying Johnson's latest postconviction motion.

(3) A writ of mandamus is an extraordinary remedy issued by this Court to compel a trial court to perform a duty.<sup>2</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>3</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 dictate the control of its docket.<sup>4</sup>

(4) There is no basis for the issuance of a writ of mandamus in this case. The record reflects that the Superior Court did, in fact, review objections to the Commissioner's report filed by Johnson. Moreover, this Court will not compel the Superior Court to perform a particular judicial function, particularly when it appears that the Superior Court actually did perform that function. Therefore, we conclude that Johnson's petition for a writ of mandamus must be dismissed.

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

<sup>3</sup> *Id.*

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

NOW, THEREFORE, IT IS ORDERED that the State's motion to dismiss is GRANTED. The petition for a writ of mandamus is DISMISSED.

BY THE COURT:

/s/ Myron T. Steele  
Chief Justice