

IN THE SUPREME COURT OF THE STATE OF DELAWARE

IN THE MATTER OF THE §
PETITION OF MICHAEL § No. 163, 2012
BOSTON FOR A WRIT OF §
MANDAMUS §

Submitted: April 2, 2012

Decided: April 5, 2012

Before **HOLLAND, BERGER** and **JACOBS**, Justices

ORDER

This 5th day of April 2012, it appears to the Court that:

(1) The petitioner, Michael Boston, seeks to invoke this Court's original jurisdiction to issue an extraordinary writ of mandamus¹ to compel the Superior Court to rule on his motion for postconviction relief. The State of Delaware has filed an answer requesting that Boston's petition be dismissed. We find that Boston's petition manifestly fails to invoke the original jurisdiction of this Court. Accordingly, the petition must be dismissed.

(2) The record before us reflects that, in July 1992, Boston was found guilty by a Superior Court jury of two counts of Assault in the Third Degree, one count of Attempted Assault in the First Degree and related

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

weapon charges. This Court affirmed Boston's convictions on direct appeal.²

(3) The Superior Court docket reflects the following. Boston filed his first motion for postconviction relief pursuant to Superior Court Criminal Rule 61 on June 10, 2010. The motion was referred to a Commissioner, who requested that Boston's counsel file an affidavit to rebut Boston's claims of ineffective assistance of counsel. The Commissioner ultimately recommended that the motion be denied. Boston subsequently filed objections to the Commissioner's report and recommendation. The Superior Court docket reflects that the Superior Court adopted the recommendation of the Commissioner and denied Boston's motion on December 3, 2010.

(4) A writ of mandamus is an extraordinary remedy issued by this Court to compel a trial court to perform a duty.³ 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.⁴

² *Boston v. State*, Del. Supr., No. 463, 1992, Holland, J. (Oct. 20, 1993).

³ *In re Bordley*, 545 A.2d 619, 620 (Del. 1988).

⁴ *Id.*

(5) There is no basis for the issuance of a writ of mandamus in this case. Boston's petition for a writ of mandamus to compel the Superior Court to decide his postconviction motion is moot in light of the Superior Court's December 3, 2010 order.⁵ The petition must, therefore, be dismissed.

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

BY THE COURT:

/s/ Carolyn Berger
Justice

⁵ *Crescent/Mach I Partners, L.P. v. Dr. Pepper Bottling Co. of Texas*, 962 A.2d 205, 208 (Del. 2008).