

IN THE SUPREME COURT OF THE STATE OF DELAWARE

IN THE MATTER OF THE §
PETITION FOR A WRIT OF § No. 342, 2001
CERTIORARI BY CHRISTOPHER §
R. DESMOND. §

Submitted: August 22, 2001
Decided: August 29, 2001

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

ORDER

This 29th day of August 2001, it appears to the Court that:

(1) On July 24, 2001, the petitioner, Christopher R. Desmond, filed a petition for a writ of certiorari. On August 20, 2001, Desmond filed a document entitled “Memorandum of Law in Support of Certiorari.”

(2) Under Supreme Court Rule 43, respondent-State of Delaware’s answer to the petition was due to be filed on or before August 13, 2001.¹ On August 20, 2001, the State filed a motion for leave to file the answer out of time. By Order dated August 20, 2001, the Court granted the State’s motion and extended the filing date to August 27, 2001. The State filed its answer and motion to dismiss on August 22, 2001.

¹The respondent’s answer to an extraordinary writ is due to be filed within 20 days of the filing of the complaint with the Court. Supr. Ct. R. 43(b)(ii).

(3) Desmond has filed a motion seeking to strike the State’s motion for leave to file the answer out of time. Desmond objects to the State’s request for an extension of time and to the State’s participation in this case as the “real party of interest.”

(4) To the extent Desmond objects to the State’s request for an extension of time, his motion to strike is moot. To the extent Desmond objects to the State’s participation in this matter as the “real party of interest,” his motion to strike is without merit. Supreme Court Rule 43(b) provides that “all other parties to the action in the trial court shall be deemed respondents, notwithstanding the fact that the relief sought is not specifically directed to them.”²

(5) Desmond’s “Memorandum of Law in Support of Certiorari” is a nonconforming paper pursuant to Supreme Court Rule 34. Supreme Court Rule 43 does not provide for a petitioner’s memorandum filed nearly one month after the extraordinary writ petition. Under the circumstances of this case, however, wherein the “Memorandum of Law in Support of Certiorari” was filed prior to the State’s answer and motion to dismiss, the Court will

²Supr. Ct. R. 43(b)(i).

consider the memorandum as if it had been filed in conjunction with the certiorari petition.

(6) Having considered Desmond's petition for a writ of certiorari and "Memorandum of Law in Support of Certiorari," as well as the State's answer and motion to dismiss, it appears to the Court that the petition should be dismissed. In October 1992, a Superior Court jury convicted Desmond of multiple counts of first degree robbery and related offenses. Desmond's convictions have been the subject of a direct appeal, two postconviction motions, and a federal habeas corpus proceeding. On direct appeal, Desmond's convictions and sentences were affirmed.³ Desmond's applications for state postconviction relief and federal habeas corpus relief have been denied.⁴

(7) In June 2001, Desmond filed a petition for a writ of habeas corpus in the Superior Court. By order dated July 2, 2001, the Superior Court

³*Desmond v. State*, Del. Supr., 654 A.2d 821 (1994).

⁴*Desmond v. State*, Del. Supr., No. 487, 1995, Berger, J., 1996 WL 145818 (Mar. 8, 1996) (ORDER); *Desmond v. Snyder*, D. Del., C.A. No. 96-327-GMS, Sleet, J., 1999 WL 33220036 (Nov. 16, 1999) (Mem. Op.); *Desmond v. State*, Del. Supr., No. 5, 2001, Berger, J., 2001 WL 257803 (Mar. 8, 2001) (ORDER).

summarily denied Desmond's petition, holding that the relief requested by Desmond was not available through habeas corpus.⁵

(8) On July 24, 2001, Desmond filed an appeal from the Superior Court's July 2 denial of habeas corpus relief.⁶ On the same date, Desmond filed his petition for a writ of certiorari. Desmond seeks to invoke this Court's original jurisdiction to review the Superior Court's July 2 denial of habeas corpus relief as well as prior orders of the Superior Court in Desmond's criminal case.

(9) A writ of certiorari is an extraordinary remedy used to correct irregularities in the proceedings of a trial court.⁷ Certiorari is available to challenge a final order of a trial court only when the right to appeal is denied, a question of grave public policy and interest is involved, and no other basis for review is available.⁸

(10) Desmond is currently exercising his right to appeal the Superior Court's July 2 denial of habeas corpus relief. Since Desmond has a "basis for

⁵*In re Desmond*, Del. Super., C.A. No. 01M-06-055, Cooch, J. (July 2, 2001).

⁶*Desmond v. State*, Del. Supr., No. 341, 2001.

⁷*Shoemaker v. State*, Del. Supr., 375 A.2d 431, 437 (1977).

⁸*Id.*

review” in the pending appeal, his petition for a writ of certiorari to review the July 2 order must be dismissed.⁹

(11) Desmond’s certiorari petition to review prior orders of the Superior Court is unavailing. Desmond has already exercised his right to appeal his convictions. Additionally, he has raised two other appeals in this Court from the denial of postconviction relief. A writ of certiorari is not a substitute for a motion for postconviction relief. It is only available when “no other basis for review was available.”¹⁰

NOW, THEREFORE, IT IS ORDERED that Desmond’s motion to strike is DENIED. The State’s motion to dismiss is GRANTED. Desmond’s petition for a writ of certiorari is DISMISSED.

BY THE COURT:

/s/ Carolyn Berger
Justice

⁹*Id.* at 438.

¹⁰*Id.*