

IN THE SUPREME COURT OF THE STATE OF DELAWARE

IN THE MATTER OF THE                    §  
PETITION OF DONALD                   § No. 313, 2001  
BREDBENNER FOR A WRIT OF        §  
CERTIORARI                               §

Submitted: July 19, 2001  
Decided: August 23, 2001

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

**ORDER**

This 23<sup>rd</sup> day of August 2001, it appears to the Court that:

(1) The petitioner, Donald Bredbenner, pled guilty in 1991 to one count of first degree unlawful sexual intercourse. He was sentenced to life imprisonment. He did not appeal his conviction, nor has he filed any petitions seeking postconviction relief pursuant to Superior Court Criminal Rule 61.

(2) Bredbenner seeks to invoke the original jurisdiction of this Court by requesting the issuance of a writ of certiorari.<sup>1</sup> In his petition, Bredbenner contends that the Superior Court had no jurisdiction over his offense because, at most, he was guilty of incest, an offense that is within the exclusive jurisdiction of the Family Court. The State of Delaware, as the real party in interest, has filed a response to Bredbenner's petition requesting that the petition be dismissed.

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<sup>1</sup>Supr. Ct. R. 43.

(3) A writ of certiorari is an extraordinary remedy used to correct errors in the proceedings of a lower court. The fundamental difference between a certiorari proceeding and an appeal is that the latter “brings the case up on its merits while the . . . [former] brings up the record only so that the reviewing court can merely look at the regularity of the proceedings.”<sup>2</sup> There are four important threshold qualifications for certiorari review: (i) the judgment below must be final; (ii) the right of appeal must have been denied; (3) there must be no other available basis for review; and (4) the petition must present a “question of grave public policy and interest.”<sup>3</sup> If these threshold requirements are not met, then this Court lacks jurisdiction to hear the petitioner's claims, and the proceeding will be dismissed.

(4) Bredbenner’s petition fails to meet these threshold qualifications on several grounds. First, Bredbenner had the right to appeal from his conviction and sentence, even though he chose not to exercise that right. Second, Bredbenner had an alternative basis for review through the postconviction process. Finally, the issue raised in Bredbenner’s petition, which challenges the jurisdiction of the Superior Court to convict and sentence him for first degree

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<sup>2</sup>*Shoemaker v. State*, Del. Supr., 375 A.2d 431, 437 (1977).

<sup>3</sup>*Id.* at 438.

unlawful sexual intercourse, does not present a question of grave public policy and interest. This Court previously has held that a defendant may be charged with and convicted of unlawful sexual intercourse even if the defendant also could have been charged with incest.<sup>4</sup> “The Superior Court has personal and subject matter jurisdiction over adults who are indicted for a crime that is a felony, irrespective of whether the victim is a child.”<sup>5</sup> The Superior Court also has derivative jurisdiction over misdemeanor offenses, which are properly before it as a lesser-included offense.<sup>6</sup> Bredbenner offers no reason for the Court to revisit this holding as a matter of “public policy and interest.”<sup>7</sup> Accordingly, Bredbenner’s petition fails to invoke the original jurisdiction of this Court.

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

BY THE COURT:

/s/ Carolyn Berger

Justice

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<sup>4</sup>*See, e.g., Wilson v. State*, Del. Supr., No. 116, 1992, Veasey, C.J. (Aug. 10, 1992) (ORDER).

<sup>5</sup>*Slater v. State*, Del. Supr., 606 A.2d 1334, 1337 (1992).

<sup>6</sup>*Id.* at 1338.

<sup>7</sup>*Shoemaker v. State*, 375 A.2d at 438.