

IN THE SUPREME COURT OF THE STATE OF DELAWARE

IN THE MATTER OF THE                    §  
PETITION OF WILLIAM J.   §        No. 308, 2001  
WEBB, JR., FOR A WRIT OF        §  
MANDAMUS.                               §

Submitted: July 23, 2001

Decided: July 30, 2001

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

**ORDER**

This 30<sup>th</sup> day of July 2001, upon consideration of the petition for a writ of mandamus filed by William J. Webb, Jr.,<sup>1</sup> and the answer and motion to dismiss filed by the State of Delaware, it appears to the Court that:

(1) In March 2000, Webb pleaded guilty to first degree burglary, first degree assault and endangering the welfare of a child. Webb was

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<sup>1</sup>The Court has not considered Webb's three letters filed with the Court on July 18, 2001, nor has the Court considered Webb's July 26 reply to the State's answer and motion to dismiss or his July 30 amendment to the reply. By operation of Supreme Court Rule 43(b)(ii), other than the complaint and the answer and motion to dismiss, no further submissions of the parties are accepted, unless otherwise directed by the Court.

sentenced in June 2000 to 15 ½ years imprisonment, suspended after seven years imprisonment.<sup>2</sup> Webb did not pursue a timely appeal.<sup>3</sup>

(2) Webb filed his first motion for postconviction relief in August 2000. The Superior Court denied Webb's motion in October 2000.<sup>4</sup> Webb did not appeal. Webb filed his second motion for postconviction relief in October 2000. The Superior Court denied that motion in November 2000.<sup>5</sup> Webb's appeal from that decision is pending before this Court.<sup>6</sup>

(3) Webb has applied to the Court for a writ of mandamus directed to the Superior Court. In his petition, Webb attacks the proceedings leading to his conviction, and he complains about the postconviction proceedings. Webb asks the Court to overturn his convictions.

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<sup>2</sup>*State v. Webb*, Del. Super., Cr.A. No. IN99-08-0767, Cooch, J. (June 23, 2000). Additionally, Webb was found guilty of violation of probation and was sentenced to three years of imprisonment at Level V. *State v. Webb*, Del. Super., Cr.A. No. IN97-03-0286, Cooch, J. (June 23, 2000).

<sup>3</sup>Earlier this year, the Court dismissed Webb's untimely notice of appeal from the Superior Court's June 2000 sentence. *Webb v. State*, Del. Supr., No. 591, 2000, Walsh, J., 2001 WL 32447 (Jan. 8, 2001)(ORDER).

<sup>4</sup>*State v. Webb*, Del. Super., Cr.A. No. IN99-08-0767, Cooch, J., 2000 WL 1610769 ( Oct. 2, 2000).

<sup>5</sup>*State v. Webb*, Del. Super., Cr.A. No. IN99-08-0767, Cooch, J., 2000 WL 33115728 (Nov. 27, 2000).

<sup>6</sup>*Webb v. State*, Del. Supr., No. 589, 2000.

(4) The Court may issue a writ of mandamus to compel a trial court to perform a duty, but only when the complainant has a clear right to the performance of the duty, no other adequate remedy is available, and the trial court has failed or refused to perform its duty.<sup>7</sup> A writ of mandamus is not available to correct alleged trial court errors that are, or were, subject to ordinary appellate review.<sup>8</sup>

(5) Webb has not demonstrated that the Superior Court has arbitrarily failed or refused to perform a duty owed to him. Webb did not file a timely direct appeal from the June 2000 sentence. Nor did he appeal from the Superior Court's denial of his first motion for postconviction relief. This Court will not allow Webb, who had an adequate remedy in the appeal process, to invoke the extraordinary writ process as a substitute for appellate review.<sup>9</sup>

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<sup>7</sup>*In re Bordley*, Del. Supr., 545 A.2d 619, 620 (1988).

<sup>8</sup>*Matushefske v. Herlihy*, Del. Supr., 214 A.2d 883, 885 (1965).

<sup>9</sup>*Id.* Of course, Webb has not demonstrated that he is without an adequate remedy for a review of the denial of his second motion for postconviction relief. Indeed, Webb is pursuing that remedy as evidenced by the pending appeal, *Webb v. State*, No. 589, 2000.

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

BY THE COURT:

/s/ Myron T. Steele  
Justice