

IN THE SUPREME COURT OF THE STATE OF DELAWARE

IN THE MATTER OF THE PETITION §
OF AUGUSTUS EVANS FOR A WRIT § No. 112, 2014
OF MANDAMUS §

Submitted: March 20, 2014
Decided: May 1, 2014

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

ORDER

This 1st day of May 2014, upon consideration of the petition of Augustus Evans for an extraordinary writ of mandamus and for the appointment of counsel and the State's response thereto, it appears to the Court that:

(1) The petitioner, Augustus Evans, seeks to invoke the original jurisdiction of this Court, pursuant to Supreme Court Rule 43, to issue a writ of mandamus directing the Superior Court to reconsider his motions filed under Rule 33 and Rule 61 in Criminal Action Number 0609011528A. The State of Delaware has filed a motion to dismiss Evans' petition on the ground that it manifestly fails to invoke this Court's original jurisdiction to issue an extraordinary writ.

(2) Evans was convicted in 2007 by a Superior Court jury of Assault in the Second Degree, two counts of Possession of a Deadly Weapon During the Commission of a Felony, Aggravated Menacing, and Resisting Arrest. This

Court affirmed his convictions and sentence on direct appeal.¹ Since that time, Evans has filed numerous unsuccessful motions seeking a new trial and other postconviction relief. This Court affirmed the denial of Evans' second motion for postconviction relief in October 2013.² The Superior Court docket reflects that Evans recently filed his third such motion, which remains pending. Evans now appears to be requesting this Court to order the Superior Court to grant him the relief that it already has denied him.

(3) This Court will only issue the extraordinary remedy of a writ of mandamus if the complainant can show that: he has a clear right to the performance of a duty; that no other adequate remedy is available; and that the trial court has arbitrarily failed or refused to perform its duty.³ In this case, Evans has failed to establish that he has a clear right to the relief he has requested or that the Superior Court has arbitrarily refused to act. The Superior Court has adjudicated Evans' claims, and with respect to his Rule 61 motions, this Court has affirmed the Superior Court's rulings on appeal.⁴ Under no circumstances can Evans state a claim that he is entitled to mandamus relief.

¹ *Evans v. State*, 2009 WL 367728 (Del. Feb. 13, 2009).

² *Evans v. State*, 2013 WL 5614265 (Del. Oct. 10, 2013).

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

⁴ Evans did not appeal from the Superior Court's most recent order, dated December 6, 2013,

(4) Moreover, Evans' excessive, frivolous filings are abusive and have placed an undue burden on the court system.⁵ Accordingly, the Clerk of this Court is directed not to grant any future *in forma pauperis* motions filed by Evans without submitting the motion first to a Justice for review.

NOW, THEREFORE, IT IS ORDERED that the petition for the issuance of an extraordinary writ and the motion for appointment of counsel are DENIED.

BY THE COURT:

/s/ Carolyn Berger
Justice

denying his motion for a new trial.

⁵ See *Evans v. Graves*, 2013 WL 5460177 (Del. Super. Sept. 30, 2013) (denying Evans' *in forma pauperis* motion and dismissing his complaint on the ground that Evans' history of frivolous litigation statutorily prohibited the court from granting him pauper status).