

IN THE SUPREME COURT OF THE STATE OF DELAWARE

JERRY A. HURST,	§	
	§	No. 139, 2003
Defendant Below,	§	
Appellant,	§	Court Below—Superior Court
	§	of the State of Delaware, in
v.	§	and for Sussex County in Cr.
	§	A. Nos. S02-04-0002 through
STATE OF DELAWARE,	§	0004.
	§	
Plaintiff Below,	§	
Appellee.	§	Cr. ID No. 0104005136

Submitted: April 30, 2003

Decided: August 4, 2003

Before **VEASEY**, Chief Justice, **BERGER** and **STEELE**, Justices.

ORDER

This 4th day of August 2003, upon consideration of the appellant's opening brief, the appellee's motion to affirm and the appellant's "Appeal Pursuant to Supreme Court Rule 9(i),"¹ it appears to the Court that:

(1) On February 5, 2002, after a jury trial in the Sussex County Court of Common Pleas, the defendant, Jerry A. Hurst, was convicted of Resisting

¹The appellant filed the "Appeal Pursuant to Supreme Court Rule 9(i)" on July 25, 2003. The document purports to raise "due process issues" with respect to the transcript of the proceedings in the Court of Common Pleas and seeks a remand "with instructions to the Superior Court to reverse [the appellant's] convictions by the Court of Common Pleas."

Arrest, Falsely Reporting an Incident, and Disorderly Conduct. The Court of Common Pleas sentenced Hurst on the Resisting Arrest conviction to thirty days at Level V, suspended for six months at Level I probation. Moreover, the Court of Common Pleas imposed a \$100 fine on each of the three convictions.

(2) Hurst appealed to the Superior Court. The Superior Court dismissed Hurst's appeal, however, for lack of jurisdiction because neither the prison sentence nor the fines met the jurisdictional threshold.² This appeal followed.

(3) On appeal in this Court, Hurst argues that, notwithstanding any jurisdictional bar to appellate review, the Superior Court should have considered Hurst's claims as arising on certiorari. Hurst's claims are unavailing. The Superior Court was not required to conduct certiorari review.

(4) A writ of certiorari is an extraordinary remedy used to correct irregularities in the proceedings of a trial court.³ Review is generally confined to jurisdictional matters, errors of law or procedural irregularities that appear on

²There is a right of appeal to the Superior Court from a criminal conviction in the Court of Common Pleas when the sentence imposed is imprisonment exceeding one month or a fine exceeding \$100.00. Del. Const. art. IV, § 28; Del. Code Ann. tit. 11, § 5301(c).

³*Shoemaker v. State*, 375 A.2d 431, 437 (Del. 1977).

the record.⁴ On certiorari, the reviewing court may not consider the merits of the case nor substitute its own judgment for that of the trial court,⁵ nor may the reviewing court weigh and evaluate evidence.⁶

(5) Certiorari is available to challenge a final order of a trial court only where the right of appeal is denied, a grave question of public policy and interest is involved, and no other basis for review is available.⁷ If these threshold requirements are not met, the reviewing court lacks jurisdiction to hear the petitioner's claims.⁸

(6) In the Superior Court, Hurst argued that he was entitled to certiorari review to consider alleged discovery violations and erroneous evidentiary rulings that were made during the course of the Court of Common Pleas proceedings. In his opening brief on appeal, Hurst alleges that the Court of Common Pleas record demonstrates; (i) an illegal seizure by the police; (ii)

⁴*Goldstein v. City of Wilmington*, 598 A.2d 149, 152 (Del. 1991).

⁵*Stevens v. Steiner*, 1990 WL 38277 (Del. Supr.).

⁶*Castner v. State*, 311 A.2d 858 (Del. 1973).

⁷*Shoemaker v. State*, 375 A.2d 431, 437-438 (Del. 1977).

⁸*Matter of Butler*, 689 A.2d 1081, 1081 (Del. 1992).

an “incoherent” Information; (iii) numerous discovery violations; (iv) lack of a speedy trial; (v) erroneous evidentiary rulings; (vi) a “cover-up” and scheduling fraud by the Court of Common Pleas; and (vii) lack of proper notice and enforcement of citation on appeal by the Superior Court.

(7) Hurst was not entitled to certiorari review in the Superior Court, nor is he entitled to the issuance of a writ of certiorari from this Court. Notwithstanding Hurst’s arguments to the contrary, the errors complained of by Hurst are clearly *not* evident from the face of the record. Certiorari may not be used as a device to circumvent the requisites of the appellate jurisdiction of this Court⁹ or the Superior Court, as established by the Constitution.¹⁰

(8) It is manifest on the face of Hurst’s opening brief that the appeal is without merit. The issues presented are clearly controlled by settled Delaware law. To the extent that judicial discretion is involved, clearly there was no abuse of discretion.

⁹The Delaware Constitution provides for this Court to hear “appeals from the Superior Court in criminal causes, upon application of the accused in all cases in which the sentence shall be death, imprisonment exceeding one month, or fine exceeding One Hundred Dollars, and in such other cases as provided by law.” Del. Const. art. IV, § 11(1)(b). The Court may not receive an appeal directly from the Court of Common Pleas.

¹⁰*Castner v. State*, 311 A.2d 858 (1973).

NOW, THEREFORE, IT IS ORDERED that the State's motion to affirm is GRANTED. The judgment of the Superior Court is AFFIRMED. The "Appeal Pursuant to Supreme Court Rule 9(i)" DENIED as moot.

BY THE COURT:

/s/ Myron T. Steele
Justice