

IN THE SUPREME COURT OF THE STATE OF DELAWARE

IN THE MATTER OF THE §
PETITION OF DEAN C. § No. 516, 2001
BLACK FOR A WRIT OF §
MANDAMUS. §

Submitted: November 6, 2001
Decided: December 7, 2001

Before **VEASEY**, Chief Justice, **WALSH** and **HOLLAND**, Justices.

O R D E R

This 7th day of December 2001, upon consideration of the petition for a writ of mandamus filed by Dean C. Black and the answer and motion to dismiss filed by the State of Delaware,¹ it appears to the Court that:

(1) In 1985, a Superior Court jury convicted Dean C. Black of two counts of Attempted Rape in the First Degree. The victim was Black's minor daughter. Black was sentenced to a total of 25 years in prison, suspended for probation after serving 15 years. On direct appeal, this Court affirmed Black's conviction and sentence.² This Court also affirmed the Superior

¹The Court has not considered Black's unsolicited "reply to State's answer and motion to dismiss." See Supr. Ct. R. 43(b)(ii) (providing that "unless the Court otherwise directs, no further submissions of the parties shall be accepted").

²*Black v. State*, Del. Supr., No. 173, 1985, Walsh, J., 1986 WL 16979 (June 23, 1986) (ORDER).

Court's denial of Black's motion for postconviction relief.³ In 1997, Black was found to be in violation of probation and was sentenced to 10 years in prison, suspended after serving 9½ years for a period of work release.⁴

(2) In September 2001, Black submitted to the Family Court a “motion for relief from judgment” requesting that the Family Court set aside Black's convictions in the Superior Court. In support of his motion, Black contended that the sexual assault of his daughter constituted incest, an offense that is within the exclusive jurisdiction of the Family Court. The Family Court did not docket Black's “motion for relief from judgment,” but instead returned Black's papers to him with an “Advisory Notice of Deficiency.”

(3) Black asks for a writ of mandamus to compel the Family Court to accept his papers for filing. This Court will issue a writ of mandamus to a trial court only when the petitioner can show that: (i) there is the clear right to the performance of a duty at the time of the petition; (ii) no other adequate

³*Black v. State*, Del. Supr., No. 9, 1989, Moore, J., 1989 WL 42302 (Mar. 3, 1989) (ORDER).

⁴*See Black v. State*, Del. Supr., No. 242, 1999, Holland, J., 1999 WL 1098171 (Nov. 2, 1999) (ORDER) (affirming the denial of Black's motion for correction of sentence).

remedy is available; and (iii) the trial court has failed or refused to perform its duty.⁵

(4) Black has not demonstrated that the Family Court has refused to perform a duty owed to him. The Family Court has no authority to set aside a Superior Court conviction. Moreover, Black's underlying complaint, that the Superior Court did not have jurisdiction over the charges brought against him, is without merit. This Court has already decided that the Superior Court had jurisdiction over the charges against Black.⁶ There is no basis for the Court to issue a writ of mandamus to the Family Court.

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

BY THE COURT:

/s/ E. Norman Veasey
Chief Justice

⁵*In re Bordley*, Del. Supr., 545 A.2d 619, 620 (1988).

⁶*Black v. State*, Del. Supr., No. 353, 2000, Holland, J., 2000 WL 1627205 (Oct. 26, 2000) (ORDER).