

IN THE SUPREME COURT OF THE STATE OF DELAWARE

IN THE MATTER OF THE PETITION §
OF PETER KOSTYSHYN FOR A WRIT § No. 307, 2013
OF MANDAMUS §

Submitted: July 3, 2013
Decided: July 16, 2013

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

ORDER

This 16th day of July 2013, upon consideration of the petition of Peter Kostyshyn for an extraordinary writ of mandamus and for the appointment of counsel¹ and the State’s response thereto, as well as the rule to show cause,² it appears to the Court that:

(1) The petitioner, Peter Kostyshyn, 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 review all filings of defendant” in Criminal Action Number 0908020496. Kostyshyn also requests that this Court

¹ On July 1, 2013, Kostyshyn filed a document inquiring about the proper procedure to “reduce [sic] justices from De Supreme Ct. decisions when there is a conflict.” Kostyshyn appears to assert that the Justices who decided his direct appeal, *Kostyshyn v. State*, 51 A.3d 416 (Del. 2012), are biased against him. To the extent that his inquiry can be construed as a motion for recusal, it is denied. A judge’s recusal is not required simply because of adverse rulings that the judge made in the same or prior proceedings involving the litigant. *Los v. Los*, 595 A.2d 381, 385 (Del. 1991).

² The Clerk of the Court issued a notice to Kostyshyn to show cause why his petition should not be dismissed for his failure to pay the Supreme Court filing fee or else file a motion to proceed *in forma pauperis*.

“overturn all verdicts,” “remand the mandamus back to the Superior Court for a fact finding hearing,” “issue an order directing the Office of Conflict Counsel to represent” him, and compel the State to give him his “full ... prison files including the head beating trauma....” The State of Delaware has filed a motion to dismiss Kostyshyn’s petition on the grounds that there is no showing that the Superior Court has arbitrarily failed or refuse to perform its duty in Kostyshyn’s case.

(2) In November 2010, Kostyshyn was convicted by a Superior Court jury of Aggravated Menacing, Possession of a Deadly Weapon During the Commission of a Felony, and Terroristic Threatening. The Superior Court sentenced him to a total period of twelve years at Level V incarceration, to be suspended after serving seven years in prison for decreasing levels of supervision. This Court affirmed his convictions and sentence on direct appeal.³ Since that time, Kostyshyn has filed numerous unsuccessful motions, writs, appeals and petitions seeking further review of his convictions. Kostyshyn now asks this Court to order the Superior Court, among other things, to overturn all of his convictions.

³ *Kostyshyn v. State*, 51 A.3d 416 (Del. 2012).

(3) A writ of mandamus will only be issued 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.⁴ In this case, Kostyshyn has failed to establish that he has a clear right to the relief he has requested. Moreover, Kostyshyn's excessive, frivolous filings are abusive and have placed an undue burden on the court system. Accordingly, the Clerk of this Court is directed not to docket any future *pro se* filings from Kostyshyn relating to any of his existing criminal cases unless those filings are accompanied by the required Supreme Court filing fee or a properly notarized, fully compliant motion to proceed *in forma pauperis*.

NOW, THEREFORE, IT IS ORDERED that the petition for the issuance of an extraordinary writ is DENIED. The notice to show cause is moot.

BY THE COURT:

/s/ Carolyn Berger
Justice

⁴*In re Bordley*, 545 A.2d 619, 620 (Del. 1988).