

IN THE SUPREME COURT OF THE STATE OF DELAWARE

BRIAN J. WINWARD,	§
	§ No. 595, 2000
Petitioner Below-	§
Appellant,	§
	§
v.	§ Court Below—Superior Court
	§ of the State of Delaware,
JOHN H. WHITE, SHARON	§ in and for New Castle County
AGNEW, and JANE DOE,	§ C.A. No. 00M-09-081
	§
Respondents Below-	§
Appellees.	§

Submitted: March 7, 2001  
Decided: March 26, 2001

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

**ORDER**

This 26<sup>th</sup> day of March 2001, upon consideration of the appellant's opening brief and the appellees' motion to affirm,<sup>1</sup> it appears to the Court that:

(1) The appellant, Brian Winward, filed this appeal from the Superior Court's denial of his petition for a writ of mandamus. Winward sought a writ of mandamus directed to Superior Court personnel to compel them to provide him with a copy of the transcript from his 1989 criminal trial. The State of Delaware, as the real party in interest, has filed a motion to affirm the judgment

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<sup>1</sup>On March 13, 2001, Winward filed a reply to the appellees' motion to affirm. A reply to a motion to affirm is not permitted under Supreme Court Rule 25(a) unless requested by the Court. The Court did not request a reply in this case. Therefore, Winward's reply shall

of the Superior Court on the ground that it is manifest on the face of Winward's opening brief that the appeal is without merit. We agree and affirm.

(2) The Superior Court may issue a writ of mandamus to a State officer, tribunal, board, or agency to compel the performance of an official duty.<sup>2</sup> A writ of mandamus is designed to compel the performance of an official duty if it is shown that: the complainant has a clear right to the performance of the duty; that no other adequate remedy is available; and that the officer, tribunal, board, or agency arbitrarily has failed or refused to perform its duty.<sup>3</sup>

(3) In this case, the Superior Court denied Winward's petition on the ground that neither the Prothonotary nor the court reporter's office had refused to provide the transcript to Winward. Having reviewed the record, we agree with the Superior Court. The court reporter's letter to Winward indicates that the court reporter's office was having some difficulty in locating the transcript due to the age of the case and requested Winward to provide any information he could about the case. The letter is not a refusal to provide the transcript, and, in fact, states the court reporter's office "would keep trying." Furthermore, as

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be stricken as a nonconforming document. *See* Supr. Ct. R. 34.

<sup>2</sup>*See* 10 Del. C. § 564.

<sup>3</sup>*In re Bordley*, Del. Supr., 545 A.2d 619, 620 (1988).

the Superior Court correctly noted, the transcript would not be prepared in any event until Winward demonstrated that he, or someone on his behalf, was able and willing to pay for the transcript preparation. Winward offered nothing on the record to demonstrate his ability or willingness to pay for the transcript. As the Superior Court noted, if Winward submits an appropriate request for transcript and pays a deposit toward the transcript preparation, the transcript will be prepared. If the transcript is not prepared, then Winward may file a new petition for a writ of mandamus.

(4) Consequently, it is manifest on the face of Winward's opening brief that the appeal is without merit. The issuance of a writ of mandamus is within the Superior Court's discretion, and clearly there was no abuse of judicial discretion in this case.

NOW, THEREFORE, IT IS ORDERED that the State's motion to affirm is GRANTED. The judgment of the Superior Court is AFFIRMED.

BY THE COURT:

/s/ Randy J. Holland  
Justice