

IN THE SUPREME COURT OF THE STATE OF DELAWARE

IN THE MATTER OF THE §
PETITION OF KEVIN S. § No. 453, 2003
EPPERSON FOR A WRIT OF §
MANDAMUS §

Submitted: October 6, 2003
Decided: November 4, 2003

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

ORDER

This 4th day of October 2003, upon consideration of Kevin Epperson's petition for a writ of mandamus and the State's answer and motion to dismiss, it appears to the Court that:

(1) Epperson filed a petition requesting this Court to issue an extraordinary writ of mandamus directed to the Superior Court Prothonotary. Epperson asserts that he has filed postconviction motions in two separate Superior Court criminal cases. Epperson complains that the Prothonotary failed to docket either motion. Epperson seeks a writ of mandamus directing the Superior Court Prothonotary to docket the motions he has filed in each of his cases.

(2) Contrary to Epperson's assertion, the Superior Court docket in case number 9408009291 reflects that the Prothonotary, in fact, docketed Epperson's motion in that case. The Superior Court denied the motion on September 16, 2003. Epperson's petition for a writ of mandamus therefore is moot with respect to that case.

(3) With respect to case number 3070411DI, it appears that Epperson, in fact, filed his original motion in this Court. Supreme Court staff forwarded the documents to the Superior Court Prothonotary in New Castle County. Having received the documents from this Court, the Superior Court docket entry reflects that documents were sent from the Supreme Court for informational purposes. Given Epperson's improper attempt to have this Court's staff file his Rule 35(a) motion for him, he clearly has shown no right to the issuance of an extraordinary writ of mandamus.¹ Moreover, because Epperson's motion is now before the Superior Court for its action, his request for a writ of mandamus is moot.²

NOW, THEREFORE, IT IS ORDERED that Epperson's petition for the issuance of an extraordinary writ of mandamus is DISMISSED.

BY THE COURT:

/s/ Randy J. Holland
Justice

¹ *In re Hyson*, 649 A.2d 807 (Del. 1994) (holding that, in order to obtain a writ of mandamus, petitioner must prove that the trial court has arbitrarily refused to perform a duty to which the petitioner has a clear legal right, and no other adequate remedy is available).

² The Clerk of the Supreme Court today has written to the Superior Court judge assigned to Epperson's case and has informed the judge of Epperson's improper attempt to have Supreme Court staff file his motion in Superior Court. The Superior Court judge has been directed to address the merits of Epperson's motion, notwithstanding the improper filing.