

IN THE SUPREME COURT OF THE STATE OF DELAWARE

IN THE MATTER OF THE §
PETITION OF JOHN M. § No. 414, 2011
FRANKLIN FOR A WRIT OF §
PROHIBITION §

Submitted: September 16, 2011

Decided: October 14, 2011

Before **STEELE**, Chief Justice, **HOLLAND**, and **BERGER**, Justices

ORDER

This 14th day of October 2011, upon consideration of the petition of John Franklin for the issuance of an extraordinary writ of prohibition and the State's response and motion to dismiss, it appears to the Court that:

(1) The petitioner, John Franklin, seeks to invoke the original jurisdiction of this Court by requesting that an extraordinary writ of prohibition be issued to the Superior Court. Franklin contends that the Superior Court exceeded its jurisdiction in his case by allowing the State to pursue criminal charges against him without filing an indictment. Apparently, he requests that this Court issue a judgment of acquittal in his case. The State of Delaware has filed a motion to dismiss Franklin's petition.

(2) Franklin was convicted in 2004, following a Superior Court jury trial, of first degree rape and related charges. His convictions and

sentence were affirmed by this Court on direct appeal.¹ In 2006, Franklin filed a motion for postconviction relief alleging, among other things, ineffective assistance of counsel. The Superior Court denied the motion, and this Court affirmed that decision.² Franklin filed a second, unsuccessful petition for postconviction relief in 2007. This Court again affirmed the Superior Court's denial of relief.³

(3) Franklin now has filed this writ of prohibition alleging that the Superior Court lacked jurisdiction to convict him because he never properly waived his right to be indicted. Franklin also alleges that his appointed counsel was ineffective and that he is entitled to a judgment of acquittal because he is actually innocent. The State contends that Franklin's petition should be dismissed because it fails to invoke this Court's original jurisdiction. We agree.

(4) A writ of prohibition is the legal equivalent of the equitable remedy of injunction and may be issued to prevent a lower court from exceeding the limits of its jurisdiction.⁴ It enjoins a court from future action

¹ *Franklin v. State*, 2005 WL 528674 (Del. Mar. 2, 2005)

² *Franklin v. State*, 2006 WL 1374675 (Del. May 17, 2006).

³ *Franklin v. State*, 2008 WL 361143 (Del. Feb. 12, 2008).

⁴ *In re Hovey*, 545 A.2d 626, 628 (Del. 1988).

and is not appropriate in a case like Franklin's where a final judgment already has been issued.⁵

NOW, THEREFORE, IT IS ORDERED that the State's motion to dismiss is GRANTED. The petition for an extraordinary writ is DISMISSED.

BY THE COURT:

/s/ Myron T. Steele
Chief Justice

⁵ *In re Carter*, 2008 WL 5061144 (Del. Dec. 1, 2008).