

IN THE SUPREME COURT OF THE STATE OF DELAWARE

IN THE MATTER OF THE §
PETITION OF PHIL JONES §
FOR A WRIT OF § No. 362, 2000
MANDAMUS. §

Submitted: August 14, 2000
Decided: September 25, 2000

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

ORDER

This 25th day of September 2000, upon consideration of the petition of Phil Jones (“Jones”) for a writ of mandamus and the State of Delaware’s answer and motion to dismiss, it appears to the Court that:

(1) Jones is pursuing postconviction relief in the Superior Court.¹ Jones has filed a petition for a writ of mandamus in this Court seeking to compel the Superior Court to act on his postconviction motion.

(2) Jones filed his motion for postconviction relief on March 28, 2000. By order dated April 18, 2000, the Superior Court directed that Jones’ former counsel and the Department of Justice file responses to the motion by May 12 and May 26, 2000, respectively. Jones was directed to file his reply to the responses by June 9, 2000. On May 24, 2000, the Superior Court amended the filing schedule to provide that Jones’ former counsel and the Department of

¹ Jones pled guilty in 1997 to maintaining a vehicle for keeping controlled substances and conspiracy second degree. *State v. Jones*, Del. Super., Cr.A.Nos. IN97-05-1762, 1763.

Justice file their respective responses on May 31 and June 14, 2000. Jones was directed to file his reply by June 28, 2000.

(3) Jones' former counsel filed his responsive affidavit in a timely manner on May 30, 2000. Although it is not listed on the Superior Court docket, it appears that the Department of Justice's response was submitted in a timely manner to the Superior Court Judge on June 13, 2000. Jones did not file his reply.

(4) In his petition in this Court, Jones avers that he received neither the affidavit filed by his former counsel on May 30 nor the response filed by the Department of Justice on June 13, 2000. Indeed, from the limited record in this Court, it appears that neither former counsel's affidavit nor the Department of Justice's response was served upon Jones, as is required by the rules of the Superior Court.² Notwithstanding this unfortunate oversight by former counsel and the Department of Justice, it appears from the docket that, when notified of the service problem by Jones, the Superior Court Judge, by letter order issued on August 1, 2000, provided Jones with copies of the submissions and directed that Jones file his reply to the submissions by August 18, 2000. It does not appear that Jones filed his reply.

² See Super. Ct. Crim. R. 49(a) (providing that papers filed shall be served upon each of the parties).

(5) This Court will issue a writ of mandamus to a trial court only when the petitioner can show that the trial court has arbitrarily failed or refused to perform a duty.³ Jones has not demonstrated that the Superior Court has arbitrarily failed or refused to perform a duty. To the contrary, it appears that the Superior Court responded to Jones' problem with service and will rule in due course upon Jones' postconviction motion. "This Court will not issue a writ of mandamus to compel a trial court to perform a particular judicial function, to decide a matter in a particular way, or to dictate the control of its docket."⁴

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

BY THE COURT:

s/ Joseph T. Walsh
Justice

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

⁴ *Id.*