

IN THE SUPREME COURT OF THE STATE OF DELAWARE

IN THE MATTER OF THE §
PETITION OF KEVIN S. § No. 55, 2004
EPPERSON FOR A WRIT OF §
MANDAMUS §

Submitted: March 3, 2004
Decided: March 30, 2004

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

ORDER

This 30th day of March 2004, upon consideration of Kevin Epperson's petition for a writ of mandamus and the State's response thereto, it appears to the Court that:

(1) Epperson has filed a petition requesting this Court to issue an extraordinary writ of mandamus directed to the Superior Court Prothonotary. Epperson appears to assert that the Prothonotary in New Castle County did not properly docket a postconviction motion that Epperson filed in that court in 2003. Epperson has made similar allegations in similar petitions that this Court has previously denied.¹ In his present petition, Epperson asserts that the Superior Court has never docketed a petition he filed for postconviction relief

¹ See *In re Epperson*, Del. Supr., No. 549, 2003, Holland, J. (Feb. 25, 2004); *In re Epperson*, Del. Supr., No. 453, 2003, Holland, J. (Nov. 4, 2003).

pursuant to Superior Court Criminal 61. We conclude that the petition has no merit.

(2) Epperson was convicted in 1996, in Criminal Action Numbers IN94-08-1484 and –1485, and sentenced as an habitual offender to 52 years imprisonment followed by probation. Since that time, Epperson has filed countless petitions for postconviction relief and for extraordinary writs under several different Superior Court Criminal Action Numbers. In Criminal Action Number IN94-08-1484, Epperson has filed no less than six postconviction motions, all of which were denied by Superior Court. In fact, the docket in that case reflects that Epperson filed a document entitled “Motion Under Nunc Pro Tunc” on August 28, 2003, which the Superior Court denied on September 16, 2003. To the extent Epperson is claiming that he filed in 2003, another motion in that case, that the Prothonotary has not docketed, he has provided no evidence to support that assertion.

(3) A writ of mandamus is an extraordinary remedy that will issue only if there is no other available remedy and the petitioner can establish that the trial court has arbitrarily refused to perform a duty to which the petitioner has a clear legal right.² Epperson has offered no evidence to substantiate his

² *In re Hyson*, 649 A.2d 807 (Del. 1994).

claim that the Prothonotary has refused to docket any of his numerous filings. Accordingly, there is no basis for this Court to issue an extraordinary writ of mandamus.

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

BY THE COURT:

/s/ Jack B. Jacobs
Justice