

IN THE SUPREME COURT OF THE STATE OF DELAWARE

IN THE MATTER OF THE	§	
PETITION OF GEARL T.	§	No. 451, 2011
FLOWERS FOR A WRIT OF	§	
MANDAMUS.	§	Cr. ID No. 1008025982

Submitted: September 6, 2011

Decided: September 9, 2011

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

ORDER

This 9th day of September 2011, upon consideration of the petition and amended petition for a writ of mandamus filed by Gearl T. Flowers and the answer and motion to dismiss filed by the State of Delaware, it appears to the Court that:

(1) In January 2011, a Superior Court jury convicted the petitioner, Gearl T. Flowers, of Burglary in the Third Degree and Theft. In March 2011, Flowers filed *pro se* motions for a new trial and for the appointment of [new] counsel (hereinafter “Flowers’ motions”). Flowers’ sentencing has been continued pending the Superior Court’s disposition of Flowers’ motions.

(2) On August 24, 2011 Flowers filed a petition for a writ of mandamus in this Court. On August 30, 2011, Flowers filed a second petition for a writ of mandamus. Flowers’ second mandamus petition was

deemed to be an amendment to the mandamus petition he filed six days earlier (hereinafter “Flowers’ August 2011 mandamus petitions”).

(3) Flowers’ August 2011 mandamus petitions concern the Superior Court’s proceedings on Flowers’ motions. In the aggregate, Flowers’ August 2011 mandamus petitions ask the Court to reverse his convictions, appoint him new counsel, grant him unsecured bail and direct that his current defense counsel review his trial.

(4) Flowers sought similar relief in prior mandamus petitions that he filed in July 2011 (hereinafter “Flowers’ July 2011 mandamus petitions”). By Order dated August 16, 2011, the Court dismissed Flowers’ July 2011 mandamus petitions.¹

(5) As we explained in our August 16, 2011 Order dismissing Flowers’ July 2011 mandamus petitions, a writ of mandamus is an extraordinary remedy issued by this Court to compel a trial court to perform a duty.² Relief is granted only when a mandamus petitioner demonstrates, among other things, that the trial court has arbitrarily failed or refused to perform a duty owed to the petitioner.³

¹ *In re Flowers*, 2011 WL 3610126 (Del. Supr.).

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

³ *Id.*

(6) The Court concludes that Flowers' August 2011 mandamus petitions fail to demonstrate that the Superior Court has arbitrarily failed or refused to perform a duty owed to Flowers. The Superior Court is continuing to conduct proceedings on Flowers' motions. It is not this Court's function to compel the Superior Court to decide Flowers' motions in a particular way.⁴

(7) To the extent Flowers' August 2011 mandamus petitions seek a writ directed to his defense counsel, the petitions manifestly fail to invoke the Court's jurisdiction. The Court has authority to issue a writ of mandamus to courts and judges.⁵ The Court has no authority to issue a writ of mandamus to the petitioner's defense counsel.

NOW, THEREFORE, IT IS ORDERED that the State's motion to dismiss is GRANTED. Flowers' August 2011 mandamus petitions are DISMISSED.

BY THE COURT:

/s/ Myron T. Steele
Chief Justice

⁴ *Id.*

⁵ *See* Del. Const. art. IV, § 11(5) (establishing Court's original jurisdiction to issue writs of prohibition, quo warranto, certiorari and mandamus to courts and judges).