

IN THE SUPREME COURT OF THE STATE OF DELAWARE

IN THE MATTER OF THE §
PETITION OF NIKERRAY § No. 185, 2000
MIDDLEBROOK FOR A WRIT OF §
MANDAMUS §

Submitted: May 3, 2000
Decided: May 30, 2000

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

ORDER

This 30th day of May 2000, upon consideration of Nikerray Middlebrook's petition for a writ of mandamus and the State's answer and motion to dismiss, it appears to the Court that:

(1) In July 1997, a Superior Court jury convicted Middlebrook of attempted murder, first degree assault, and three weapon offenses. On June 12, 1998, Middlebrook was sentenced to 38 years in jail to be suspended after 37 years for one year of probation. The Superior Court denied Middlebrook's motion for a new trial on June 26, 1998. Middlebrook did not file a direct appeal to this Court from his convictions and sentences. On November 17, 1998, the Superior Court denied Middlebrook's renewed motion for a new trial. Middlebrook did not appeal from that decision either.

(2) Beginning in November 1999, Middlebrook filed several motions and letters with the Superior Court seeking to obtain a copy of his trial transcript. According to Middlebrook, the trial transcript is necessary for him to prepare a

petition for postconviction relief. Middlebrooks' applications either were denied or referred to counsel of record. Middlebrook did not appeal from those rulings.

(3) Instead Middlebrook filed his present *pro se* petition seeking to invoke the original jurisdiction of this Court pursuant to Supreme Court Rule 43. Middlebrook requests this Court to issue a writ of mandamus to the Superior Court to compel production of the requested transcript to Middlebrook at public expense. Middlebrook contends that he needs the requested documents in order to prepare a postconviction petition pursuant to Superior Court Criminal Rule 61. The State has filed an answer and a motion to dismiss Middlebrook's petition.

(4) A writ of mandamus is designed to compel an inferior court to perform a duty if it is shown that: the complainant has a clear right to the performance of the duty; that no other adequate remedy is available; and that the trial court has arbitrarily failed or refused to perform its duty.¹ Mandamus may not be used under any circumstances, however, to review interlocutory orders in criminal cases.² Until Middlebrook files, and the Superior Court finally rules upon, the Rule 61 motion, the denial of transcript remains an interlocutory order that is not subject to review by this Court.³

¹*In re Bordley*, Del. Supr., 545 A.2d 619, 620 (1988).

²*Norman v. State ex rel. Bove*, Del. Supr., 177 A.2d 347, 349 (1962).

³*See Gottlieb v. State*, Del. Supr., 697 A.2d 400, 401-02 (1997).

(5) Moreover, a writ of mandamus also is not warranted under the present circumstances because Middlebrook has an adequate remedy at law available to him.⁴ Middlebrook first must file his petition for postconviction relief. As part of his Rule 61 petition, Middlebrook may request, and the Superior Court may order, the preparation of any transcript needed to determine the merits of the petition.⁵ If Middlebrook's postconviction petition is unsuccessful on the merits, then Middlebrook may appeal to this Court for a review of his claims, including any claim relating to the denial of his request for transcript.

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

BY THE COURT:

s/Maurice A. Hartnett, III

Justice

⁴*See In re Hyson*, 649 A.2d 807, 808 (1994).

⁵Super. Ct. Crim. R. 61(d)(3).