

IN THE SUPREME COURT OF THE STATE OF DELAWARE

IN THE MATTER OF THE §
PETITION OF KEVIN B. § No. 407, 2004
OROPEZA FOR A WRIT OF §
PROHIBITION §

Submitted: October 18, 2004
Decided: December 3, 2004

Before **BERGER, JACOBS** and **RIDGELY**, Justices.

ORDER

This 3rd day of December 2004, upon consideration of the petition of Kevin B. Oropeza for a writ of prohibition, it appears to the Court that:

(1) Oropeza, a prison inmate, seeks a writ of prohibition, contending that the Superior Court lacked jurisdiction to dismiss his civil complaint pursuant to Del. Code Ann. tit. 10, § 8803(b).¹

(2) A writ of prohibition is the legal equivalent of the equitable remedy of injunction and may be issued to prevent a lower court from proceeding in a matter when it has no jurisdiction, or to prevent it from exceeding its jurisdiction in a matter that is properly before it.² The jurisdictional defect must be manifest upon

¹ By Order dated September 20, 2004, this Court affirmed the Superior Court's February 10, 2004 order dismissing Oropeza's legal malpractice complaint against a Delaware attorney on the ground that the statute of limitations had run. *Oropeza v. Maurer*, Del. Supr., No. 89, Steele, C.J. (Sept. 20, 2004).

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

the record.³ The burden is on the petitioner to demonstrate to this Court, by clear and convincing evidence, that the trial court is without jurisdiction in the matter or is attempting to exceed its jurisdiction.⁴

(3) In cases such as this where a petitioner proceeds in forma pauperis, the Superior Court is compelled by statute to dismiss a complaint that, upon its review, is factually or legally frivolous, and/or malicious.⁵ Here, Oropeza has failed to demonstrate that the Superior Court exceeded its jurisdiction by dismissing his complaint. Moreover, a writ of prohibition, which enjoins a lower court from future action, is not an appropriate writ where, as here, a final judgment of the Superior Court has been appealed and has been affirmed by this Court.

NOW, THEREFORE, IT IS ORDERED that the petition for a writ of prohibition is DISMISSED.

BY THE COURT:

/s/ Jack B. Jacobs
Justice

³ Id.

⁴ Id. at 629.

⁵ Del. Code Ann. tit. 10, § 8803(b) (1999).