

IN THE SUPREME COURT OF THE STATE OF DELAWARE

IN THE MATTER OF THE §
PETITION OF CURTIS ALLEN § No. 556, 2013
FOR A WRIT OF MANDAMUS. §

Submitted: November 4, 2013
Decided: November 12, 2013

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

ORDER

This 12th day of November 2013, upon consideration of the petition for a writ of mandamus filed by Curtis Allen, and the answer and motion to dismiss filed by the State of Delaware, it appears to the Court that:

(1) The petitioner, Curtis Allen, seeks the issuance of a writ of mandamus directing that the Superior Court rescind its November 30, 2011 order dismissing his second motion for postconviction relief, and issue a new order from which Allen can appeal. Allen also requests the appointment of counsel. The background of this matter is as follows.

(2) In May 2004, Allen was convicted of several criminal offenses. Allen's convictions were affirmed on direct appeal.¹ In October 2009, Allen filed his first motion for postconviction relief under Superior Court Criminal Rule 61 (hereinafter "Rule 61").

¹ *Allen v. State*, 953 A.2d 699 (Feb. 25, 2005).

(3) By report and recommendation dated November 3, 2009, a Superior Court Commissioner (hereinafter “the Commissioner”) “summarily dismissed” Allen’s first postconviction motion after determining that the assertions were not “sufficiently pled,” did not meet the threshold level to overcome the procedural bars of Rule 61,” and were “based upon conjecture and innuendo.” Allen did not file objections to the Commissioner’s report. Thereafter, upon *de novo* review of the report and recommendation, the Superior Court dismissed Allen’s motion, and on appeal this Court affirmed.²

(4) On October 3, 2011, Allen filed his second motion for postconviction relief. By order dated October 6, 2011, the Commissioner “summarily dismissed” the motion after determining that:

[The] motion addresses no newly discovered evidence or new laws which might allow for a reconsideration of [the] convictions. . . . This Court need not waste judicial resources to rehash the same convictions which were affirmed by the Supreme Court. . . . Additionally, it is well understood that a defendant’s first Rule 61 motion should provide the Court with the sufficient information necessary to consider the defendant’s grounds for relief. . . . [T]he Court need not revisit this case absent some other showing by [Allen].

Again, Allen did not file objections to the Commissioner’s order. After *de novo* review, the Superior Court issued an order dated November 30, 2011 that

² *Allen v. State*, 2010 WL 3184441 (Del. Aug. 12, 2010).

“affirmed” the Commissioner’s October 6, 2011 order and dismissed Allen’s motion.

(5) Allen’s petition for a writ of mandamus seeks appellate review of the Superior Court’s dismissal of his second postconviction motion. In support of his mandamus petition, Allen contends that his second postconviction motion was not properly referred to the Commissioner, and that the Commissioner exceeded his authority when he issued an order summarily dismissing the motion. Also, Allen alleges that, due to the “action and inaction of court-related personnel,” he never received a copy of the Superior Court’s November 30, 2011 order.

(6) This Court may issue a writ of mandamus as an extraordinary remedy to compel the Superior Court to perform a duty.³ As a condition precedent to the issuance of a writ of mandamus, a petitioner must demonstrate that he has a clear right to the performance of a duty that the Superior Court failed or refused to perform, and that no other remedy is, or was, available.⁴ This Court will not allow the extraordinary writ process to be distorted into a substitute for appellate review.⁵

(7) Having carefully considered the parties’ positions in this case, the Court has concluded that Allen is not entitled to mandamus relief. Allen has not demonstrated that the Superior Court arbitrarily failed or refused to perform a duty

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

⁴ *Id.*

⁵ *Matushefske v. Herlihy*, 214 A.2d 883, 885 (Del. 1965).

owed to him, or that he was without an adequate remedy to address the claims he raises in his mandamus petition. To the extent Allen complains that the Commissioner erred when summarily dismissing his second postconviction motion, Allen's remedy was in filing objections to the Commissioner's October 6, 2011 order. To the extent Allen complains that he was denied the right to appeal from the November 30, 2011 order because he never received a copy of the order, Allen's remedy was in filing an appeal in mid-December 2011 (when he says he first became aware of the order) where he could have argued that the delay in filing the appeal was caused by court-related personnel.

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

BY THE COURT:

/s/ Randy J. Holland
Justice