

IN THE SUPREME COURT OF THE STATE OF DELAWARE

IN THE MATTER OF THE PETITION OF JIMMY MURPHY FOR A WRIT OF MANDAMUS.	No. 109, 2000
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Submitted: April 3, 2000

Decided: April 14, 2000

Before **WALSH, HOLLAND and HARTNETT**, Justices.

ORDER

This 14th day of April 2000, it appears to the Court that:

(1) The petitioner, Jimmy Murphy ("Murphy"), is pursuing postconviction relief pursuant to Superior Court Criminal Rule 61 ("Rule 61") in the Superior Court.¹ On March 17, 2000, Murphy filed a petition for a writ of mandamus in this Court. The State of Delaware has filed an answer and has moved to dismiss the petition.

(2) Murphy's pending mandamus petition marks the second time in recent months Murphy has sought mandamus relief in connection with the postconviction proceedings in the Superior Court. By Order dated November 19, 1999, this Court denied Murphy's first petition for a writ of mandamus on the basis that Murphy had not demonstrated that the Superior

¹ In 1996, Murphy was convicted of delivery of cocaine and maintaining a dwelling for keeping controlled substances. Murphy was sentenced to life in prison as an habitual offender. 11 *Del. C.* § 4214(b). On direct appeal, Murphy's conviction and sentence were affirmed. *Murphy v. State*, Del. Supr., No. 388, 1996, Hartnett, J., 1997 WL 328603 (May 30, 1997) (ORDER).

Court had failed or refused to perform a duty owed to him.² In his pending petition, Murphy alleges that the passage of time and recent events have made it clear that the Superior Court is failing or refusing to perform a duty owed to him.

(3) Murphy complains that the Superior Court Commissioner assigned to his case has granted his former counsel “extension after extension” to file a Rule 61(g)(2) affidavit.³ Murphy further complains that the Superior Court has failed to take action on Murphy’s motion for an evidentiary hearing that was filed on January 18, 2000, and on his motion for sanctions for delay that was filed on February 16, 2000. Murphy claims that the Superior Court has “simply abandoned the rules and statutory requirements of Superior Court Criminal Rule 61.” Murphy petitions this Court “for relief in the interest of effective and expeditious administration of the business of the courts as well as in accordance with

² *In re Murphy*, Del. Supr., No. 501, 1999, Hartnett, J, 1999 WL 1098209 (Nov. 19, 1999) (ORDER).

³ Rule 61(g)(2) provides that the judge may direct the lawyer who represented the movant to respond to the postconviction allegations.

his rights to due process.”

(4) To the extent Murphy complains that the Superior Court has failed to take action on his motion for sanctions for delay, Murphy’s petition is moot. By order dated April 10, 2000, the Superior Court Commissioner denied Murphy’s motion for sanctions and also denied a motion for appointment of counsel that was filed by Murphy on April 5, 2000.⁴

(5) This Court will issue a writ of mandamus to a trial court only when the petitioner can show that there is the clear right to the performance of a duty at the time of the petition, no other adequate remedy is available, and the trial court has failed or refused to perform the duty.⁵ “This Court will not issue a writ of mandamus to compel a trial court to perform a particular judicial function, to decide a matter in a particular way, or to dictate the control of its docket.”⁶

(6) Murphy has not demonstrated that the Superior Court has arbitrarily failed or refused to perform a duty owed to him. The Superior Court docket reflects that Murphy’s former defense counsel has been ill and thus unable to file a responsive Rule 61(g)(2) affidavit. The Superior Court Commissioner is well within her authority in granting extensions of time to counsel to file the affidavit.

(7) Furthermore, Murphy has not demonstrated that the Superior Court will not adequately address Murphy’s motion for an evidentiary hearing in due course. In the April 10 order, the Superior Court

⁴ *State v. Murphy*, Del. Super., Cr.A.Nos. IK95-09-0365R1, -0366R1, Maybee, Comm. (April 10, 2000) (ORDER)..

⁵ *In re Brookins*, Del. Supr., 736 A.2d 204, 206 (1999).

⁶ *In re Bordley*, Del. Supr., 545 A.2d 619, 620 (1988).

Commissioner granted Murphy the opportunity to submit, by April 21, 2000, additional postconviction claims based upon counsel's apparent inability to file the Rule 61(g)(2) affidavit. Rule 61(h) provides that the Superior Court shall determine whether an evidentiary hearing is desirable *after* considering the motion for postconviction relief, the State's response and the movant's reply.

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

BY THE COURT:

Randy J. Holland
Justice