

IN THE SUPREME COURT OF THE STATE OF DELAWARE

IN THE MATTER OF THE §
PETITION OF TYRONE L. § No. 142, 2002
MILLER FOR AN §
EXTRAORDINARY WRIT §

Submitted: March 28, 2002

Decided: May 6, 2002

Before **VEASEY**, Chief Justice, **WALSH** and **HOLLAND**, Justices

ORDER

This 6th day of May 2002, upon consideration of the petition of Tyrone L. Miller for an extraordinary writ and the State's answer and motion to dismiss, it appears to the Court that:

(1) In July 1993, Miller was convicted by a Superior Court jury of Attempted Unlawful Sexual Intercourse in the First Degree and Unlawful Sexual Penetration in the Third Degree. He was sentenced to incarceration at Level V for life, plus 5 years. His convictions and sentences were affirmed by this Court on direct appeal.¹ The Superior Court docket sheet reflects that, in 1995, Miller moved for postconviction relief pursuant to Superior Court Criminal Rule 61. The Superior Court denied the motion, but Miller did not appeal the Superior Court's decision to this Court. Although it is not clear on

¹*Miller v. State*, Del. Supr., No. 382, 1993, Moore, J. (Apr. 29, 1994).

the face of Miller's petition for extraordinary relief, it appears he is requesting that his convictions be vacated.

(2) A petition for an extraordinary writ may not be used as a substitute for a timely appeal.² Although Miller filed a direct appeal, he did not pursue fully the remedy available to him pursuant to Rule 61 by filing an appeal of the Superior Court's denial of his petition for postconviction relief. Moreover, Miller's petition states no basis for the issuance of an extraordinary writ. For these reasons, Miller's petition for extraordinary relief must be dismissed.

NOW, THEREFORE, IT IS ORDERED that Miller's petition for an extraordinary writ is DISMISSED.

BY THE COURT:

s/Joseph T. Walsh
Justice

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