

IN THE SUPREME COURT OF THE STATE OF DELAWARE

IN THE MATTER OF THE           §  
PETITION OF NORRIS           § No. 111, 2002  
DURHAM FOR AN               §  
EXTRAORDINARY WRIT       §  
  §

Submitted: March 22, 2002

Decided: May 6, 2002

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

**ORDER**

This 6<sup>th</sup> day of May 2002, upon consideration of the petition of Norris Durham for an extraordinary writ and the State's answer and motion to dismiss, it appears to the Court that:

(1) In May 1985, Durham pleaded guilty but mentally ill to Rape in the First Degree and Kidnaping in the Second Degree. He was sentenced to incarceration at Level V for life, plus 30 years. The Superior Court docket sheet reflects that, in 1992 and 1997, Durham moved for postconviction relief pursuant to Superior Court Criminal Rule 61. The Superior Court denied the motions, but Miller did not appeal the Superior Court's decisions to this Court. Although it is not clear on the face of Durham'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.<sup>1</sup> Durham failed to pursue fully the remedy available to him pursuant to Rule 61 by appealing the Superior Court's denials of his motions for postconviction relief. Moreover, Durham's petition states no basis for the issuance of an extraordinary writ. For these reasons, Durham's petition for extraordinary relief must be dismissed.

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

BY THE COURT:

s/Joseph T. Walsh  
Justice

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<sup>1</sup>*Matushefske v. Herlihy*, 214 A.2d 883, 885 (Del. 1965).