

IN THE SUPREME COURT OF THE STATE OF DELAWARE

IN THE MATTER OF THE §
PETITION OF DAVID C. SAFFORD § No. 196, 2005
FOR A WRIT OF MANDAMUS §

Submitted: May 31, 2005
Decided: July 1, 2005

Before **STEELE**, Chief Justice, **HOLLAND**, and **RIDGELY**, Justices.

ORDER

This 1st day of July 2005, upon consideration of David Safford's petition for a writ of mandamus and the State's response in opposition, it appears to the Court that:

(1) Safford was arrested in October 2004 on multiple criminal charges. A grand jury indicted him in December 2004 on numerous charges, including robbery, burglary, assault, and several weapon offenses. He is scheduled for a jury trial in the Superior Court on July 19, 2005. He currently is represented by a public defender.

(2) Safford filed his present petition asserting that his constitutional rights are being denied by the Superior Court's application of Criminal Rule 47 to his case. Superior Court Criminal Rule 47 provides, in part, that the Superior Court "will not consider pro se applications by defendants who are represented by counsel unless the defendant has been granted permission to

participate with counsel in the defense.”¹ The Superior Court denied Safford’s request to either disqualify his present counsel or to participate as co-counsel. Safford’s petition for a writ of mandamus apparently requests this Court to order the Superior Court to consider the substantive issues Safford wishes to raise pro se without requiring Safford to waive his right to counsel. Among other issues, Safford apparently wants to argue that his right to a speedy trial has been denied.

(3) The State has moved to dismiss Safford’s petition on the ground that this Court lacks original jurisdiction to order the requested relief. We agree. This Court has authority to issue a writ of mandamus only when the petitioner can demonstrate a clear right to the performance of a duty, no other adequate remedy is available, and the trial court arbitrarily has failed or refused to perform its duty.² In this case, Safford’s assertion that the Superior Court should consider his pro se motions is a matter that can be advanced on appeal following any conviction.³ A petitioner who has an adequate remedy in the appellate process may not use the extraordinary writ process as a substitute for a properly filed appeal.⁴

¹ DEL. SUPER. CT. CRIM. R. 47 (2005).

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

³ *Rogers v. State*, 457 A.2d 727, 731 (Del. 1983).

⁴ *See Matushefske v. Herlihy*, 214 A.2d 883, 885 (Del. 1965).

NOW, THEREFORE, IT IS ORDERED that Safford's petition is hereby DISMISSED.

BY THE COURT:

/s/ Myron T. Steele
Chief Justice