

IN THE SUPREME COURT OF THE STATE OF DELAWARE

IN THE MATTER OF THE §
PETITION OF RICHARD § No. 182, 2005
SHOCKLEY FOR A WRIT OF §
MANDAMUS. § Def. ID No. 0203023972

Submitted: July 1, 2005
Decided: August 16, 2005

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

ORDER

This 16th day of August 2005, upon consideration of the petition for a writ of mandamus filed by Richard Shockley, the answer and motion to dismiss filed by the State of Delaware, Shockley’s letter dated May 19, 2005 and his letter filed on July 1, 2005, it appears to the Court that:

(1) In June 1998, Shockley pleaded guilty to Theft of a Senior and was sentenced to two years at Level V suspended for one year at Level IV followed by one year at Level III (“the 1998 case”). The sentence in the 1998 case was reimposed in 1999 and again in 2000 when Shockley was found guilty of violation of probation; the sentence was also modified.¹ In 2001, Shockley was discharged as unimproved.

¹*State v. Shockley*, Del. Super., Cr.A. No. K97-11-0262I, Terry, J. (June 16, 1998); *State v. Shockley*, Del. Super., Cr.A. No. VK97-11-0262I, Ridgely, P.J. (March 30, 1999); *State v. Shockley*, Del. Super., Cr.A. No. VK97-11-0262-02, Ridgely, P.J. (May 12, 2000); *State v. Shockley*, Del. Super., Cr.A. No. VK97-11-0262-03, Witham, J. (Oct. 13, 2000); *State v. Shockley*, Del. Super., Cr.A. No. VK97-11-0262-03, Witham, J. (Dec. 14, 2000).

(2) In March 2003, a Superior Court jury convicted Shockley of Attempted Burglary in the Third Degree, Possession of Burglar Tools and Criminal Mischief (“the 2003 case”). Shockley was sentenced as a habitual criminal to five years at Level V for Attempted Burglary in the Third Degree plus a total of two and one-half years at Level V suspended after one year at Level IV followed by eighteen months of probation. On direct appeal, Shockley’s convictions were affirmed.²

(3) During the latter half of January 2005, Shockley filed a total of seven motions to compel in the 2003 case. It appears from the limited record in this Court that Shockley sought to compel individuals from Probation and Parole, Presentence, and the Treatment Access Services Center (TASC) to provide him with information arising from the 1998 sentence, as reimposed and modified, with respect to matters considered by the Superior Court when sentencing Shockley in the 2003 case. Also, Shockley sought to compel individuals from the Department of Justice to provide him with information stemming from alleged plea offers in the 2003 case. Shockley stated that he needed the information to prepare a motion for postconviction relief under Superior Court Criminal Rule 61 (“Rule 61”).

²*Shockley v. State*, 2004 WL 1790198 (Del. Supr.).

(4) On March 4, 2005, the Superior Court issued a letter requesting that Shockley's former defense counsel ("defense counsel") respond to the motions to compel. Defense counsel filed her response on March 8, 2005.

(5) On May 3, 2005, Shockley filed his petition for a writ of mandamus in this Court. Shockley asked that the Court issue a writ of mandamus directing the Superior Court to rule on his motions to compel.

(6) By order dated May 18, 2005, the Superior Court denied Shockley's motions to compel.³ In its answer and motion to dismiss filed on May 20, 2005, the State contends that Shockley's mandamus petition is moot as a result of the Superior Court's May 18 order. The State's position is well-taken.

(7) This Court will issue a writ of mandamus to a trial court only when the petitioner can show that there is a 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 its duty.⁴ "[T]his Court will not issue a writ of mandamus to compel a trial court to perform a particular judicial

³*State v. Shockley*, Del. Super., Cr. ID No. 0203023972, Witham, J. (May 19, 2005).

⁴*In re Bordley*, 545 A.2d 619, 620 (Del. 1988).

function, to decide a matter in a particular way, or to dictate the control of its docket.”⁵

(8) By letter dated May 19, 2005, Shockley asks the Court to review the Superior Court’s May 18 order denying his motions to compel. In a letter filed on July 1, 2005, Shockley requests permission to supplement his mandamus petition with a copy of defense counsel’s response to the motions to compel and with copies of a letter and a motion to compel discovery that defense counsel filed in the 2003 case. Shockley contends that defense counsel’s documents establish that the Department of Justice in Kent County has engaged in “a pattern of preventing [Shockley] from receiving information pertinent to his case and defense.” Shockley also requests that the Court issue a writ of mandamus to the attorney general.

(9) The Court rejects Shockley’s May 19 and July 1 letters.⁶ The Court’s jurisdiction to issue a writ of mandamus “is limited to instances when the respondent is a trial court or a judge thereof.”⁷ The attorney general is not

⁵*Id.*

⁶*See* Supr. Ct. R. 43(b)(vii) (providing that additional submissions by the petitioner will not be accepted without leave of the Court).

⁷*In re Hitchens*, 600 A.2d 37, 38 (Del. 1991).

a judicial officer.⁸ Moreover, “[m]andamus may not be used under any circumstances . . . to review interlocutory orders in criminal cases.”⁹ In this case, the Superior Court’s May 18 order denying Shockley’s motions to compel is an interlocutory order that is not subject to review in this Court.¹⁰ (1 0)

Finally, mandamus relief is not warranted because Shockley has an adequate remedy at law, namely a motion for postconviction relief under Rule 61.¹¹ As part of a motion for postconviction relief, Shockley may request expansion of the record to include information that he alleges is relevant to the determination of the motion.¹² If the postconviction motion is unsuccessful on the merits, Shockley may then appeal to this Court for a review of his claims, including any claim relating to his request to expand the record.¹³

⁸*In re Watson*, 2003 WL 22416060 (Del. Supr.).

⁹*In re Middlebrook*, 2000 WL 975060 (Del. Supr.) (citing *Norman v. State ex rel. Bove*, 177 A.2d 347, 349 (Del. 1962)).

¹⁰*Id.* (citing *Gottlieb v. State*, 697 A.2d 400, 401-02 (Del. 1997)); *Reynolds v. State*, 2004 WL 1656964 (Del. Supr.).

¹¹*In re Middlebrook*, 2000 WL 975060 (Del. Supr.).

¹²*See* Super. Ct. Crim. R. 61(g) (providing for expansion of record under certain circumstances and at the discretion of the judge).

¹³*In re Middlebrook*, 2000 WL 975060 (Del. Supr.) (citing *In re Hyson*, 649 A.2d 807, 808 (Del. 1994)).

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

BY THE COURT:

/s/ Myron T. Steele
Chief Justice