

IN THE SUPREME COURT OF THE STATE OF DELAWARE

IN THE MATTER OF THE §
PETITION OF JESSE H. § No. 488, 2005
NICHOLSON, JR., FOR A WRIT §
OF MANDAMUS §

Submitted: October 27, 2005
Decided: December 23, 2005

Before **STEELE**, Chief Justice, **JACOBS** and **RIDGELY**, Justices

ORDER

This 23rd day of December, it appears to the Court that:

(1) The petitioner, Jesse H. Nicholson, Jr., a prison inmate, seeks to invoke this Court's original jurisdiction to issue an extraordinary writ of mandamus¹ to compel the Superior Court to direct the Prothonotary to issue process in a civil case in which he is the plaintiff.² Defendants Stanley Taylor, et al., have filed an answer requesting that Nicholson's petition be dismissed. We find that Nicholson's petition manifestly fails to invoke the original jurisdiction of this Court. Accordingly, the petition must be dismissed.

(2) In April 2005, Nicholson filed a petition for a writ of mandamus in the Superior Court on the ground that prison officials had

¹ Del. Const. art. IV, § 11(6); Supr. Ct. R. 43.

² *Nicholson v. Taylor, et al.*, Del. Super., C.A. No. 05M-04-024.

arbitrarily failed to perform their duty. The Superior Court ordered that the complaint would not be dismissed and that service of process would issue. The Superior Court also granted Nicholson's motion to proceed in forma pauperis.

(3) The Superior Court docket reflects that the Prothonotary issued amended summonses to the defendants in Nicholson's case in October 2005. The Superior Court docket also reflects that all but one of the defendants were served with Nicholson's complaint in early November 2005. The remaining writ was returned non est as to defendant Taylor on November 22, 2005.

(4) A writ of mandamus is an extraordinary remedy issued by this Court to compel the trial court to perform a duty.³ As a condition precedent to the issuance of the writ, Nicholson must demonstrate that he has a clear right to the performance of the duty, no other adequate remedy is available, and the trial court has arbitrarily failed or refused to perform its duty.⁴

(5) There is no basis for the issuance of a writ of mandamus in this case. The Superior Court docket reflects that the Prothonotary has issued process, rendering Nicholson's petition moot. There is, moreover, no

³ *In re Bordley*, 545 A.2d 619, 620 (Del. 1988).

⁴ *Id.*

evidence that the Superior Court has arbitrarily failed or refused to perform its duty.

NOW, THEREFORE, IT IS ORDERED that Nicholson's petition for a writ of mandamus is DISMISSED.

BY THE COURT:

/s/ Myron T. Steele
Chief Justice