

IN THE SUPREME COURT OF THE STATE OF DELAWARE

IN THE MATTER OF THE §
PETITION OF DONALD S. § No. 332, 2006
DeWITT FOR A WRIT OF §
MANDAMUS §

Submitted: July 11, 2006

Decided: July 17, 2006

Before **BERGER, JACOBS** and **RIDGELY**, Justices.

ORDER

This 17th day of July 2006, it appears to the Court that:

(1) The petitioner, Donald S. DeWitt, seeks to invoke this Court's original jurisdiction to issue an extraordinary writ of mandamus¹ to compel the Superior Court to either act on his motion for postconviction relief and grant his immediate release or permit him to appear before the President Judge of the Superior Court to explain the basis for his petition. The State of Delaware has filed an answer requesting that DeWitt's petition be dismissed. We find that DeWitt's petition manifestly fails to invoke the original jurisdiction of this Court. Accordingly, the petition must be DISMISSED.

(2) In February 1998, DeWitt pleaded guilty to Felony Theft and Extortion. In December 2005, he filed a motion for postconviction relief in the Superior Court. The Superior Court docket reflects that, following

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

briefing, the matter was submitted to a Superior Court commissioner for decision on April 5, 2006. On June 13, 2006, the commissioner denied DeWitt's motion for transcripts and for the appointment of counsel.

(3) A writ of mandamus is an extraordinary remedy issued by this Court to compel a trial court to perform a duty.² As a condition precedent to the issuance of the writ, DeWitt 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.³

(4) There is no basis for the issuance of a writ of mandamus in this case. The record reflects that DeWitt's motion for postconviction relief was submitted for decision to the Superior Court commissioner on April 5, 2006 and that applications made by DeWitt were denied on June 13, 2006. Under these circumstances, DeWitt has failed to demonstrate that there has been an arbitrary failure or refusal to act on his postconviction motion by the Superior Court.⁴

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

³ *Id.*

⁴ *In re Brookins*, 736 A.2d 204, 206 (Del. 1999) (the passage of four months is not evidence of the judge's arbitrary failure or refusal to act).

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

BY THE COURT:

/s/ Jack B. Jacobs
Justice