

IN THE SUPREME COURT OF THE STATE OF DELAWARE

IN THE MATTER OF THE                    §  
PETITION OF LARRY D.                 §       No. 29, 2003  
MARVEL FOR A WRIT OF               §  
MANDAMUS.                               §

Submitted: February 4, 2003  
Decided:    March 19, 2003

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

**ORDER**

This 19<sup>th</sup> day of March 2003, upon consideration of the petition for a writ of mandamus filed by Larry D. Marvel and the answer and motion to dismiss filed by the State of Delaware, it appears to the Court that:

(1) In 1990, a Superior Court jury convicted Larry D. Marvel of the charge of Unlawful Sexual Intercourse in the Second Degree. The Superior Court sentenced Marvel to twenty years of imprisonment, suspended after seventeen years, for three years of probation. This Court affirmed Marvel's conviction and sentence on direct appeal.<sup>1</sup> The Court also affirmed the denial of Marvel's new trial motion<sup>2</sup> and affirmed the denials of four postconviction motions.<sup>3</sup>

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<sup>1</sup>*Marvel v. State*, 1991 WL 22358 (Del. Supr.).

<sup>2</sup>*Marvel v. State*, 1992 WL 219204 (Del. Supr.).

<sup>3</sup>*Marvel v. State*, 1994 WL 19022 (Del. Supr.); *Marvel v. State*, 1994 WL 590534 (Del. Supr.); *Marvel v. State*, 1997 WL 168326 (Del. Supr); *Marvel v. State*, 2002 WL

(2) In December 2002, Marvel filed in the Superior Court a petition for a writ of habeas corpus and an application for certification of questions of law under Supreme Court Rule 41. In those papers, Marvel challenged, as he had in his prior postconviction motions, the Superior Court's jurisdiction to conduct his trial. By order dated December 24, 2002, the Superior Court denied the habeas corpus petition and the application for certification.<sup>4</sup>

(3) Marvel has now applied to this Court for a writ of mandamus. Marvel seeks review of the Superior Court's denial of his habeas corpus petition and certification request. Marvel's petition, however, must be dismissed. First, to the extent Marvel seeks review of the denial of his habeas corpus petition, mandamus does not serve as a substitute for ordinary appellate proceedings.<sup>5</sup> Marvel could have appealed from the denial of his habeas petition, but he did not do so. Under settled law, Marvel cannot invoke the Court's original jurisdiction to obtain review of the Superior Court's decision.<sup>6</sup>

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714812 (Del. Supr.).

<sup>4</sup>*Marvel v. State*, Del. Super., C.A. No. 02M-12-007, Bradley, J. (Dec. 24, 2002).

<sup>5</sup>*In re Barbee*, 693 A.2d 317, 319 (Del. 1997).

<sup>6</sup>*Id.*

(4) Second, mandamus does not serve to review discretionary acts.<sup>7</sup> A certification of questions under law under Supreme Court Rule 41 lies entirely within the discretion of the certifying court.<sup>8</sup> Given the discretionary nature of a proceeding under Supreme Court 41, Marvel does not have a clear right to certification by the Superior Court of his proposed questions.

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

BY THE COURT:

s/Joseph T. Walsh  
Justice

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<sup>7</sup>*In re Bordley*, 545 A.2d 619, 620 (Del. 1988).

<sup>8</sup>*State v. Superior Court*, 141 A.2d 468, 471 (Del. 1958).