

IN THE SUPREME COURT OF THE STATE OF DELAWARE

IN THE MATTER OF THE	§	
PETITION OF GREGORY W.	§	No. 39, 2003
SUMMERS FOR A WRIT OF	§	
MANDAMUS.	§	Def. ID No. 93K04951DI

Submitted: February 19, 2003

Decided: March 19, 2003

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

ORDER

This 19th day of March 2003, upon consideration of the petition for a writ of mandamus filed by Gregory W. Summers and the answer and motion to dismiss filed by the State of Delaware, it appears to the Court that:

(1) In 1993, following transfer of the case from the Family Court to the Superior Court, a grand jury indicted Gregory W. Summers on the charges of Conspiracy in the Second Degree and four counts of Delivery of Cocaine. Summers pleaded guilty in the Superior Court to one count of Delivery of Cocaine and was sentenced to three years of imprisonment, suspended for time served for home confinement and two years of probation. In 1995, Summers was discharged from probation as unimproved.¹

(2) In November 2002, Summers applied for post-conviction relief. By order dated November 25, 2002, the Superior Court denied Summers'

¹*State v. Summers*, Del. Super., Cr.A. No. PK93-09-0214.

motion as procedurally barred under Superior Court Criminal Rule 61(i). Summers' appeal of that decision is pending before this Court.²

(3) In late December 2002, Summers applied to the Superior Court for a free copy of the transcript of the amenability hearing that was conducted in the Family Court and the Family Court's non-amenability order dated September 9, 1993. The Superior Court returned Summers' papers with a letter explaining that he had to apply to the Family Court for a copy of the Family Court documents. The Superior Court further advised Summers that to obtain a copy of Superior Court transcript at State expense, he had to establish his indigency and a specific need for the transcript.

(4) Summers has applied to this Court for a writ of mandamus to be directed to the Superior Court for the Superior Court's alleged failure or refusal to provide Summers with a copy of the Family Court transcript and order. Summers' petition must be denied.

(5) A writ of mandamus is designed to compel a trial court to perform a duty if it is shown that (i) the complainant has a clear right to the performance of the duty; (ii) the trial court has arbitrarily failed or refused to perform the

²*Summers v. State*, Del. Supr., No. 670, 2002.

duty; and (iii) no other adequate remedy is available.³ In this case, Summers has not demonstrated that the Superior Court has arbitrarily failed or refused to perform a duty owed to him. To the contrary, it appears that the Superior Court responded to Summers' request for a copy of the Family Court transcript and order by returning Summers' papers to him and instructing him on how to properly make that request.

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

BY THE COURT:

s/Joseph T. Walsh
Justice

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