

IN THE SUPREME COURT OF THE STATE OF DELAWARE

IN THE MATTER OF THE §
PETITION OF JERON D. BROWN § No. 132, 2007
FOR A WRIT OF MANDAMUS §
AND/OR PROHIBITION §

Submitted: March 28, 2007

Decided: May 31, 2007

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

ORDER

This 31st day of May 2007, upon consideration of Jeron Brown's petition for a writ of mandamus and/or prohibition and the State's answer and motion to dismiss, it appears to the Court that:

(1) Jeron Brown has filed a petition seeking to invoke the original jurisdiction of this Court pursuant to Supreme Court Rule 43 to issue extraordinary writs of mandamus and prohibition to the Superior Court. Brown requests that the Superior Court be directed to grant, by default, his pending postconviction motion and to prohibit the Superior Court Commissioner from taking any further action on his postconviction motion. The State of Delaware has filed an answer and a motion to dismiss the petition for an extraordinary writ. We find that Brown's petition manifestly fails to invoke this Court's original jurisdiction. Accordingly, the petition must be dismissed.

(2) The Superior Court docket reflects that a jury convicted Brown in 2005 of second degree burglary, theft, criminal mischief, and two counts of receiving stolen property. This Court affirmed his convictions and sentence on direct appeal.¹ On September 29, 2006, Brown filed his first petition for postconviction relief. The motion was referred to a Commissioner for proposed findings and recommendations. Given Brown's allegations of ineffective assistance of counsel, the Commissioner directed Brown's former counsel to file an affidavit responding to Brown's allegations by November 8, 2006. Counsel has since filed several requests seeking extensions of time to file his affidavit. Brown has objected to any extension requests. Former counsel's affidavit is now due to be filed by June 13, 2007.

(3) Brown filed his present petition arguing that the numerous time extensions granted to former counsel is evidence of the Superior Court Commissioner's bias and neglect and has caused unnecessary delay in deciding his postconviction motion. He asks this Court to order the Superior Court to grant his postconviction motion by default and to prohibit the Superior Court Commissioner from taking any other action.

¹ *Brown v. State*, 897 A.2d 748 (Del. 2006).

(4) A writ of mandamus is designed to compel an inferior court to perform a duty if it is shown that: the complainant has a clear right to the performance of the duty; that no other adequate remedy is available; and that the trial court has arbitrarily failed or refused to perform its duty.² A writ of mandamus will not be issued “to compel a trial court to perform a particular judicial function, to decide a matter in a particular way, or to dictate the control of its docket.”³ The Commissioner’s decision to permit defense counsel additional time to respond to Brown’s allegations is a matter within the Commissioner’s sound discretion.⁴ Mandamus will not lie to challenge the performance of a discretionary act.⁵

(5) Furthermore, Brown’s petition states no basis for the issuance of a writ of prohibition. Brown’s allegations of bias are based on the Commissioner’s decisions granting defense counsel’s extension requests. Without more, we find “no clear and convincing evidence that the [Commissioner] is disqualified ... on the basis of bias.”⁶

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

³ *Id.*

⁴ *See Bailey v. State*, 521 A.2d 1069, 1088 (Del. 1987).

⁵ *In re Marvel*, 2003 WL 1442466 (Del. Mar. 19, 2003).

⁶ *In re Wittrock*, 649 A.2d 1053, 1054 (Del. 1994).

NOW, THEREFORE, IT IS ORDERED that Brown's petition for the issuance of an extraordinary writ is DENIED. The State's motion to dismiss is GRANTED.

BY THE COURT:

/s/ Carolyn Berger
Justice