

IN THE SUPREME COURT OF THE STATE OF DELAWARE

IN THE MATTER OF THE §
PETITION OF FRANK CABELL § No. 352, 2007
FOR A WRIT OF MANDAMUS §

Submitted: August 13, 2007
Decided: September 19, 2007

Before **STEELE**, Chief Justice, **HOLLAND** and **BERGER**, Justices

ORDER

This 19th day of September 2007, upon consideration of the petition for a writ of mandamus, and the State’s answer and motion to dismiss,¹ it appears to the Court that:

(1) The petitioner, Frank Cabell, seeks to invoke this Court’s original jurisdiction to issue an extraordinary writ of mandamus.² The State of Delaware has filed an answer and a motion to dismiss. We conclude that Cabell’s petition manifestly fails to invoke the original jurisdiction of this Court. Accordingly, the petition must be dismissed.

(2) On July 26, 2006, a Justice of the Peace in the State of Delaware issued an arrest warrant charging Cabell with Assault in the Second Degree and Possession of a Deadly Weapon During the Commission of a Felony. However, it was not until September 4, 2007 that Cabell was

¹ In the interest of justice, we also have considered the petitioner’s unsolicited “Rebuttal to Answer and Motion to Dismiss.”

² Del. Const. art. IV, § 11(6).

indicted in the Superior Court on those charges. In his petition, Cabell claims that, despite his persistent inquiries, the Prothonotary failed to provide him with a docket number for his Superior Court criminal case and failed to provide him with any information about the status of motions he filed in that case.

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

(4) Cabell has presented no evidence reflecting that the Superior Court has arbitrarily failed or refused to perform a duty owed to him. Until the indictment was filed on September 4, 2007, there was no criminal case against Cabell in the Superior Court⁵ and, therefore, the Prothonotary had no information to give Cabell. As such, Cabell is not entitled to the issuance of a writ of mandamus.

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

⁴ *Id.*

⁵ Super. Ct. Crim. R. 3(a) and 7(a) (1).

NOW, THEREFORE, IT IS ORDERED that Cabell's petition for a writ of mandamus is DISMISSED.⁶

BY THE COURT:

/s/ Randy J. Holland
Justice

⁶ The Court takes judicial notice of the Justice of the Peace Court filings, which reflect that the arrest warrant was issued on July 26, 2006, and the Superior Court docket, which reflects that the indictment was filed in the Superior Court on September 4, 2007. Superior Court Criminal Rule 48(b) provides that an indictment may be dismissed if there was unnecessary delay in presenting the charge to the grand jury. The delay must have been caused by the prosecution and must have been prejudicial to the defendant. *State v. Harris*, 616 A.2d 288, 291 (Del. 1992).