

IN THE SUPREME COURT OF THE STATE OF DELAWARE

IN THE MATTER OF THE §
PETITION OF FRANKLIN C. § No. 474, 2007
FORAKER FOR A WRIT OF §
PROHIBITION §

Submitted: September 25, 2007

Decided: October 31, 2007

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

ORDER

This 31st day of October 2007, it appears to the Court that:

(1) The petitioner, Franklin C. Foraker, seeks to invoke this Court's original jurisdiction to issue an extraordinary writ of prohibition¹ to prevent the Superior Court's continued execution of a judgment of conviction that it did not have jurisdiction to enter. The State of Delaware has filed an answer requesting that Foraker's petition be dismissed. We find that Foraker's petition fails to invoke the original jurisdiction of this Court. Accordingly, the petition must be dismissed.

(2) In 1976, Foraker was convicted of Murder in the First Degree and Conspiracy in the First Degree. Foraker's convictions were affirmed by this Court on direct appeal.² In his petition for a writ of prohibition, Foraker claims he just learned that the autopsy report on the murder victim stated

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

² *Foraker v. State*, 394 A.2d 208 (Del. 1978).

that she had water in her lungs. On that basis, Foraker reasons that the victim could not have been killed in Delaware and, therefore, the Superior Court did not have jurisdiction over the case.

(3) The record reflects that the evidence at trial established that the murder took place on Route 273, within the State of Delaware. Moreover, the sufficiency of the evidence establishing the location of the murder was argued on appeal and this Court determined that the evidence on that point was sufficient.³

(4) A writ of prohibition is the legal equivalent of the equitable remedy of injunction and may be issued to prevent a lower court from proceeding in a matter when it has no jurisdiction, or to prevent it from exceeding its jurisdiction in a matter that is properly before it.⁴ The jurisdictional defect must be manifest upon the record.⁵ The burden is on the petitioner to demonstrate to this Court, by clear and convincing evidence, that the trial court is without jurisdiction in the matter or is attempting to exceed its jurisdiction.⁶

(5) A writ of prohibition enjoins a lower court from future action and is not an appropriate remedy where, as here, a final judgment of the

³ Id. at 213.

⁴ *In re Hovey*, 545 A.2d 626, 628 (Del. 1988).

⁵ Id.

⁶ Id. at 629.

Superior Court has been affirmed by this Court.⁷ Because Foraker has failed to demonstrate that he is entitled to the issuance of a writ of prohibition, his petition must be dismissed.

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

BY THE COURT:

/s/ Jack B. Jacobs
Justice

⁷ *In re Oropeza*, Del. Supr., No. 407, 2004, Jacobs, J. (Dec. 3, 2004).