

IN THE SUPREME COURT OF THE STATE OF DELAWARE

IN THE MATTER OF THE §
PETITION OF RICHARD DUKES § No. 529, 2007
FOR A WRIT OF PROHIBITION §

Submitted: October 17, 2007
Decided: November 7, 2007

Before **STEELE**, Chief Justice, **JACOBS** and **RIDGELY**, Justices

ORDER

This 7th day of November 2007, it appears to the Court that:

(1) The petitioner, Richard Dukes, seeks to invoke this Court's original jurisdiction to issue an extraordinary writ of prohibition¹ to prevent a particular Superior Court trial judge from deciding his pending motions for postconviction relief. The State of Delaware has filed an answer requesting that Mr. Dukes' petition be dismissed.² We find that Mr. Dukes' petition manifestly fails to invoke the original jurisdiction of this Court. Accordingly, the petition must be DISMISSED.

(2) In August 2004, Mr. Dukes was found guilty by a Superior Court jury of Possession of a Deadly Weapon by a Person Prohibited. He was sentenced to 5 years of Level V incarceration, to be suspended upon

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

² The petitioner requests that he be addressed as "Mr. Dukes."

successful completion of the Key Program, with the balance of the sentence to be served at Levels IV and III.

(3) Mr. Dukes has filed several postconviction motions, including motions for recusal and disqualification of the trial judge, as well as the instant petition for a writ of prohibition. Mr. Dukes alleges that the Superior Court trial judge is prejudiced against him because he predetermined guilt before the trial even started and imposed a sentence that exceeded the sentencing guidelines. Mr. Dukes requests that this Court issue the writ to prevent the trial judge from deciding his pending postconviction motions.

(4) A writ of prohibition is the legal equivalent of the equitable remedy of injunction and may be issued to prevent a trial 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.³ The jurisdictional defect must be manifest upon the record.⁴ 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

³ *In re Hovey*, 545 A.2d 626, 628 (Del. 1988).

⁴ *Id.*

exceed its jurisdiction.⁵ A writ of prohibition will not issue if the petitioner has another adequate remedy at law.⁶

(5) Mr. Dukes has failed to demonstrate that the Superior Court is proceeding in a matter when it has no jurisdiction or is attempting to exceed its jurisdiction in a matter that is properly before it. Moreover, Mr. Dukes has an adequate remedy at law---specifically, a timely appeal from any denial of his postconviction motions, including his motions for recusal and disqualification of the Superior Court judge.

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

BY THE COURT:

/s/ Henry duPont Ridgely
Justice

⁵ Id. at 629.

⁶ Id. at 628.