

IN THE SUPREME COURT OF THE STATE OF DELAWARE

IN THE MATTER OF THE                   §  
PETITION OF JOSEPH N.               §     No. 227, 2001  
BENNETT FOR A WRIT OF §  
MANDAMUS.                           §

Submitted: July 5, 2001  
Decided: July 31, 2001

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

**ORDER**

This 31<sup>st</sup> day of July 2001, upon consideration of the petition for a writ of mandamus filed by Joseph N. Bennett, the answer and motion to dismiss filed by the State of Delaware, and the Kent County Prothonotary's letter dated July 5, 2001,<sup>1</sup> it appears to the Court that:

(1) In March 1998, Bennett pled guilty to Robbery in the First Degree and Misdemeanor Criminal Mischief and was sentenced, as a habitual offender, to 40 years in prison. In October 1998, Bennett moved unsuccessfully for postconviction relief.<sup>2</sup> Bennett did not appeal.

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<sup>1</sup>The Court has not considered Bennett's letter filed on July 25, 2001, requesting an "order of default and that the State be ordered to produce the requested documents." See Supr. Ct. R. 43(b)(ii) (providing that, other than the respondent's answer to the petitioner's complaint, "unless the Court otherwise directs, no further submissions of the parties shall be accepted.").

<sup>2</sup>*State v. Bennett*, Del. Super., Cr.A. No. K97-10-0237I-R1, Ridgely, P.J., 2000 WL 305347 (Feb. 18, 2000).

(2) In August 2000, Bennett asked the Superior Court to appoint counsel to assist him in filing another postconviction motion. The Superior Court denied Bennett's request as well as Bennett's motion for reconsideration. By letter dated March 16, 2001, a Superior Court Paralegal sent Bennett a letter explaining how to request transcripts at State expense.

(3) The Superior Court docket does not reflect what prompted the Paralegal's March 16 letter to Bennett. Presumably, Bennett made a written request for transcripts. His request, however, does not appear on the Superior Court docket.

(4) By letter dated June 22, 2001, the Clerk of this Court asked the Kent County Prothonotary to provide the Court with copies of any correspondence that the Superior Court had received from Bennett. In her July 5 response to the Clerk, the Prothonotary indicates that the Superior Court does not have "copies of Mr. Bennett's requests and correspondence to supply to the Supreme Court." The Prothonotary's letter suggests that any

letters received by Bennett would have been returned to him as “nonconforming” documents.<sup>3</sup>

(5) Bennett has applied to this Court for a writ of mandamus. According to Bennett, the Prothonotary has not responded to his “numerous letters” requesting copies of transcript and other documents. Bennett asks that the writ issue to compel the Prothonotary to supply him with a copy of the various papers he requested.

(6) The Court will issue a writ of mandamus to a trial court only when the petitioner can show that there is a clear right to the performance of a duty at the time of the petition, no other adequate remedy is available, and the trial court has failed or refused to perform its duty.<sup>4</sup> In this case, it does not appear that Bennett has submitted an application for transcript in response to the Paralegal’s March 16 letter, nor has he demonstrated a specific need for

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<sup>3</sup>As requested by the Clerk, the Prothonotary’s July 5 letter explains how the Prothonotary handles filings, including nonconforming documents and case-related correspondence. Although not relevant to the disposition of this petition, the Court is concerned that the Superior Court’s “establish[ed] guidelines for accepting and processing inmate legal mail,” as enunciated by the Prothonotary’s July 5 letter, may not be in accordance with Superior Court Criminal Rule 55 which requires that “all papers filed with the Prothonotary shall receive a docket number and shall be noted chronologically in the list of docket entries in the case.”

<sup>4</sup>*In re Bordley*, Del. Supr., 545 A.2d 619, 620 (1988).

any other documents. Accordingly, Bennett has not demonstrated that the Superior Court has failed or refused to perform a duty owed to him, and his petition must be dismissed.

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

BY THE COURT:

s/Joseph T. Walsh  
Justice