IN THE SUPREME COURT OF THE STATE OF DELAWARE

IN THE MATTER OF THE   §
PETITION OF MICHAEL   §   No. 481, 2005
DENNISON FOR A WRIT   §
OF PROHIBITION.   §   Cr. ID No. 0501015332

Submitted: October 25, 2005
Decided: January 24, 2006

Before **STEELE,** Chief Justice, **HOLLAND** and **RIDGELY,** Justices.

O R D E R

This 24th day of January 2006, upon consideration of the petition for a writ of prohibition filed by Michael Dennison and the answer and motion to dismiss filed by the State of Delaware, it appears to the Court that:

(1)   The petitioner, Michael Dennison, pleaded guilty to Burglary in the Second Degree and was sentenced, on July 27, 2005, to eight years of imprisonment suspended after one year for six months at Level IV and two years of probation. On August 23, 2005, the Superior Court, acting *sua sponte*, vacated the July 27, 2005 sentence on the basis that the sentence was incorrect under the terms of title 11, section 825(b)(2) and (c) of the Delaware Code.[1] Under the circumstances, the Superior Court allowed Dennison to withdraw his guilty plea and scheduled the matter for trial.

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[1]*See* Del. Code Ann. tit. 11, § 825(b)(2), (c) (Supp. 2004) (providing minimum mandatory three-year prison sentence for qualifying second degree burglary conviction).

(2)   On October 18, 2005, Dennison pleaded guilty to Burglary in the Third Degree and was sentenced to three years of imprisonment. Dennison did not appeal.[2]

(3)   In his petition for a writ of prohibition, Dennison asks this Court to compel the Superior Court to reinstate the original guilty plea and to restore the sentence that the Superior Court imposed on July 27, 2005. According to Dennison, the Superior Court had no authority to vacate the July 27, 2005 sentence once that sentence was imposed.

(4)   The purpose of a writ of prohibition is to restrain a trial court from exceeding the limits of its jurisdiction.[3] A writ of prohibition will not be issued, however, if the petitioner has another adequate and complete remedy at law to correct the act of the trial court that is alleged to be erroneous.[4]

(5)   In this case, it is manifest that Dennison could have challenged the Superior Court's order vacating the July 27, 2005 sentence in an appeal from the

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[2]It appears that Dennison has appealed the Superior Court's denial of his motion to correct the October 18, 2005 sentence on the basis that the sentence exceeded TIS guidelines. *State v. Dennison*, Del. Super., Cr. ID No. 0501015332, Young, J. (Dec. 15, 2005), appeal docketed, *Dennison v. State*, No. 27, 2006 (Del. Supr. Jan. 13, 2006).

[3]*See In re Drake*, 1995 WL 788623 (Del. Supr.) (citing *In re Hovey*, 545 A.2d 626, 628 (Del. 1988)).

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

sentence ultimately imposed by the Superior Court on October 18, 2005.[5]

Although Dennison did not avail himself of that opportunity to appeal, it appears

that he can present his claims to the Superior Court in a motion for

postconviction relief filed pursuant to Superior Court Criminal Rule 61.[6] In

either case, the availability of an adequate remedy at law requires the dismissal

of Dennison's petition for a writ of prohibition.[7]

NOW, THEREFORE, IT IS HEREBY ORDERED that the State's motion

to dismiss is GRANTED. Dennison's petition for a writ of prohibition is

DISMISSED.

BY THE COURT:

/s/ Myron T. Steele
Chief Justice

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[5]*See, e.g., Hall v. State*, 1995 WL 715630 (Del. Supr.) (discussing dismissal of appeal from order vacating prior sentence in affirmance of appeal from order imposing subsequent sentence).

[6]*See* Super. Ct. Crim. R. 32(d) (providing that guilty plea may be set aside post-sentencing only under Super. Ct. Crim. R. 61); Super. Ct. Crim. R. 61 (governing procedure for postconviction remedy). *See also In re Richardson*, 1997 WL 168333 (Del. Supr.); *In re Haskins*, 1990 WL 303325 (Del. Supr.) (dismissing petitions for writ of prohibition on basis of available postconviction remedy).

[7]*See In re Richardson*, 1997 WL 168333 (Del. Supr.); *In re Haskins*, 1990 WL 303325 (Del. Supr.) (citing *In re Hovey*, 545 A.2d 626, 628 (Del. 1988)).