

IN THE SUPREME COURT OF THE STATE OF DELAWARE

IN THE MATTER OF THE  
PETITION OF JAMES  
DORSEY FOR A WRIT OF  
PROHIBITION

§  
§ No. 573, 2000  
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Submitted: January 19, 2001

Decided: January 23, 2001

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

**ORDER**

This 23<sup>rd</sup> day of January 2001, upon consideration of James Dorsey's petition for a writ of prohibition and the State's answer and motion to dismiss, it appears to the Court that:

(1) The petitioner, James Dorsey, seeks a writ of prohibition to prevent the Superior Court from retrying him on the charges of first degree murder and possession of a firearm during the commission of a felony.<sup>1</sup> Dorsey claims that the Double Jeopardy Clause of the United States and Delaware Constitutions bars his retrial because i) the prosecution presented insufficient evidence to sustain his conviction; and ii) the prosecution intentionally deprived him of a fair trial. The State of Delaware, as the real party in interest, has filed a response and a motion

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<sup>1</sup>The Superior Court granted Dorsey a new trial on the basis that he had been denied the right to a fair trial on these two charges. The Superior Court did not disturb Dorsey's conviction on the charge of possession of a deadly weapon by a person prohibited.

to dismiss Dorsey's petition. After careful consideration of the parties' positions, we have determined that the State's motion to dismiss must be granted.

(2) In a writ of prohibition proceeding, the petitioner has the burden of demonstrating to this Court, by clear and convincing evidence, that the contemplated action of the trial court exceeds its jurisdiction.<sup>2</sup> A writ of prohibition will not be issued if the petitioner has another adequate and complete remedy.<sup>3</sup> The right to appeal a criminal conviction is generally considered to be such an adequate and complete remedy.<sup>4</sup> This Court has acknowledged, however, that the remedy of appeal in a criminal case may be inadequate when the lack of jurisdiction of the trial court is clear and unmistakable.<sup>5</sup>

(3) In this case, Dorsey has not sustained his burden of demonstrating, by clear and convincing evidence, that his scheduled retrial exceeds the jurisdiction of the Superior Court. Nor can we conclude that the lack of

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<sup>2</sup>*In re Hovey*, Del. Supr., 545 A.2d 626, 629 (1988).

<sup>3</sup>*Id.* at 628.

<sup>4</sup>*Id.*

<sup>5</sup>*Id.* at 629.

jurisdiction alleged by Dorsey is so “clear and unmistakable” that the remedy of appeal may be inadequate.

(4) Based on our review of the record, it does not appear that Dorsey filed a motion to dismiss based on the ground of double jeopardy in the Superior Court prior to filing his petition for a writ of prohibition in this Court. Presentation of such a motion to the trial court in the first instance is not a necessary precondition to the filing of a petition for a writ of prohibition in this Court.<sup>6</sup> In this case, however, Dorsey’s petition for a writ of prohibition is grounded in rulings made by the Superior Court at his first trial, based on the trial court’s view of the evidence and conduct of counsel. Accordingly, we conclude that it is appropriate that Dorsey present a motion to dismiss based on the ground of double jeopardy to the Superior Court for decision in the first instance, thereby preserving his right to appeal that decision to this Court, if necessary.

(5) Dorsey filed a motion for oral argument on January 12, 2001. That motion is denied since the written submissions of the parties are sufficient and oral argument would further delay this already protracted prosecution.

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<sup>6</sup>*Id.* at 628, 630.

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

BY THE COURT:

s/Joseph T. Walsh  
Justice