

IN THE SUPREME COURT OF THE STATE OF DELAWARE

IN THE MATTER OF THE                   §  
PETITION OF CHRISTOPHER           § No. 107, 2007  
HERRING FOR A WRIT OF           §  
MANDAMUS                               §

Submitted: March 22, 2007

Decided: May 3, 2007

Before **HOLLAND, BERGER** and **JACOBS**, Justices

**ORDER**

This 3rd day of May 2007, it appears to the Court that:

(1) The petitioner, Christopher Herring, seeks to invoke this Court's original jurisdiction to issue an extraordinary writ of mandamus<sup>1</sup> to obtain transcripts of all Superior Court trial proceedings for use in a future motion for postconviction relief. The State of Delaware, as the real party in interest, has filed an answer requesting that Herring's petition be dismissed. We find that Herring's petition manifestly fails to invoke the original jurisdiction of this Court. Accordingly, the petition must be dismissed.

(2) In May 2005, Herring was found guilty by a Superior Court jury of Robbery in the First Degree, Receiving Stolen Property, and two weapon offenses. He was sentenced as a habitual offender to a term of

---

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

Level V incarceration. On appeal, this Court affirmed Herring's convictions and sentences.<sup>2</sup>

(3) The Superior Court docket sheet reflects that, in February 2006, Herring, through counsel, filed a motion for transcripts, which the Superior Court granted in March 2006. In January 2007, after his direct appeal had been decided, Herring filed another motion for transcripts. In his motion, he claimed that the transcripts he received had been altered and requested another set of transcripts. In his instant petition for a writ of mandamus, Herring claims that the Superior Court has arbitrarily refused to honor his request for transcripts.

(4) A writ of mandamus is an extraordinary remedy issued by this Court to compel a trial court to perform a duty.<sup>3</sup> As a condition precedent to the issuance of the writ, Herring must demonstrate that a) he has a clear right to the performance of the duty; b) no other adequate remedy is available; and c) the trial court has arbitrarily failed or refused to perform its duty.<sup>4</sup> Mandamus may not be invoked as a substitute for appellate review.<sup>5</sup>

(5) There is no basis for the issuance of a writ of mandamus in this case. Herring has failed to demonstrate that he has a clear right to any

---

<sup>2</sup> *Herring v. State*, Del. Supr., No. 109, 2006, Steele, C.J. (Oct. 30, 2006).

<sup>3</sup> *In re Bordley*, 545 A.2d 619, 620 (Del. 1988).

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

<sup>5</sup> *Matushefske v. Herlihy*, 214 A.2d 883, 885 (Del. 1965).

transcripts beyond those he has already received and that the Superior Court has arbitrarily failed or refused to provide him with those transcripts. Moreover, if and when the Superior Court denies Herring's request for additional transcripts, he has the remedy of a timely filed appeal from that denial.

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

BY THE COURT:

/s/ Randy J. Holland  
Justice