

IN THE SUPREME COURT OF THE STATE OF DELAWARE

IN THE MATTER OF THE §
PETITION OF GEORGE A. § No. 44, 2012
JACKSON FOR A WRIT OF §
MANDAMUS. §

Submitted: March 20, 2012

Decided: April 23, 2012

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

O R D E R

This 23rd day of April 2012, upon consideration of the petition for a writ of mandamus filed by George A. Jackson, the answer and motion to dismiss filed by the State of Delaware, and the “motion to file a sur-reply” filed by Jackson, it appears to the Court that:

(1) George A. Jackson seeks the issuance of a writ of mandamus to compel the Superior Court’s consideration of his claim that his trial counsel was ineffective for failing to cross-examine witnesses concerning the victim’s alleged statement that Jackson said “...die, die, ...die” as he was attacking her (hereinafter “the claim”). Jackson contends that he raised the claim in his 1993 motion for postconviction relief, which was filed by his appellate counsel on

remand from direct appeal.¹ According to Jackson, the Superior Court failed to address the claim in its June 15, 1993 decision denying postconviction relief.

(2) A writ of mandamus is an extraordinary remedy issued by this Court to compel a trial court to perform a duty.² Relief is granted only when a petitioner demonstrates a clear right to a performance of a duty, no other adequate remedy, and the trial court's arbitrary failure or refusal to perform the duty.³

(3) There is no basis for mandamus relief in this case. Jackson raised the claim in his 1993 postconviction motion and could have raised the court's alleged failure to address the claim on appeal. Jackson may not use the extraordinary writ process to raise the claim now.⁴ A petition for a writ of mandamus may not be used as a substitute for an appeal.⁵

NOW, THEREFORE, IT IS HEREBY ORDERED that the State's motion to dismiss is GRANTED. The petition for a writ of mandamus is DISMISSED. The motion to file a sur-reply is moot.

BY THE COURT:

/s/ Myron T. Steele
Chief Justice

¹ See *Jackson v. State*, 1993 WL 258704 (Del. Super.) (denying motion for postconviction relief).

² *In re Bordley*, 545 A.2d 619, 620 (Del. 1988).

³ *Id.*

⁴ *Matushefske v. Herlihy*, 214 A.2d 883, 885 (Del. 1965).

⁵ *Id.*