

IN THE SUPREME COURT OF THE STATE OF DELAWARE

IN THE MATTER OF THE §
PETITION OF RASHAN OWENS § No. 633, 2007
FOR A WRIT OF MANDAMUS §
AND A WRIT OF PROHIBITION §

Submitted: December 26, 2007

Decided: January 14, 2008

Before **HOLLAND, BERGER** and **RIDGELY**, Justices

ORDER

This 14th day of January 2008, it appears to the Court that:

(1) The petitioner, Rashan Owens, seeks to invoke this Court's original jurisdiction to issue, first, an extraordinary writ of mandamus¹ to compel the Superior Court to extend the time deadline for the filing of a motion for judgment of acquittal and, second, an extraordinary writ of prohibition² to stay all proceedings until the Superior Court extends the time deadline. The State of Delaware has filed an answer requesting that the petition be dismissed. We find that Owens' petition manifestly fails to invoke to original jurisdiction of this Court. Accordingly, the petition must be dismissed.

(2) In November 2007, Owens was found guilty by a Superior Court jury of four counts of Robbery in the First Degree, four counts of

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

² *Id.*

Possession of a Firearm During the Commission of a Felony, Wearing a Disguise During the Commission of a Felony, and Conspiracy in the Second Degree. On November 30, 2007, Owens' attorney moved for judgment of acquittal or a new trial. That motion is currently pending before the Superior Court.

(3) A writ of mandamus is an extraordinary remedy issued by this Court to compel a trial court to perform a duty.³ As a condition precedent to the issuance of the writ, Owens must demonstrate that he has a clear right to the performance of the duty, no other adequate remedy is available, and the trial court has arbitrarily failed or refused to perform its duty.⁴

(4) A writ of prohibition is the legal equivalent of the equitable remedy of injunction and may be issued to prevent a trial court from proceeding in a matter when it has no jurisdiction, or to prevent it from exceeding its jurisdiction in a matter that is properly before it.⁵ The jurisdictional defect must be manifest upon the record.⁶ The burden is on the petitioner to demonstrate to this Court, by clear and convincing evidence,

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

⁴ *Id.*

⁵ *In re Hovey*, 545 A.2d 626, 628 (Del. 1988).

⁶ *Id.*

that the trial court is without jurisdiction in the matter or is attempting to exceed its jurisdiction.⁷

(5) Owens is not entitled to the issuance of a writ of mandamus because he has failed to demonstrate that the Superior Court owes him a duty that it has arbitrarily failed or refused to perform. Nor is Owens entitled to the issuance of a writ of prohibition because he has failed to demonstrate that the Superior Court is attempting to exceed its jurisdiction. As such, Owens' petition must be dismissed.

NOW, THEREFORE, IT IS ORDERED that Owens' petition for a writ of mandamus and for a writ of prohibition must be DISMISSED.

BY THE COURT:

/s/ Randy J. Holland
Justice

⁷ *Id.* at 629.