

IN THE SUPREME COURT OF THE STATE OF DELAWARE

IN THE MATTER OF THE §
PETITION OF MONTY C. PEPPER § No. 77, 2007
FOR A WRIT OF CERTIORARI §

Submitted: March 29, 2007

Decided: May 23, 2007

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

ORDER

This 23rd day of May 2007, it appears to the Court that:

(1) The petitioner, Monty Pepper, filed a petition for a writ of certiorari, requesting this Court to review the constitutionality of 11 Del. C. § 770(a)(2),¹ which defines the crime of fourth degree rape. Pepper presently is incarcerated as a result of a Superior Court sentencing order, entered on April 15, 2005, following Pepper's plea of guilty to one count of second degree rape, two counts of unlawful use of a computer to depict a child engaging in a prohibited sexual act, and three counts of possession of child pornography.

(2) The State has filed an answer and motion requesting that Pepper's petition be dismissed summarily on procedural grounds. As the

¹ Section 770(a)(2) of Title 11 of the Delaware Code provides that a person is guilty of rape in the fourth degree if the person, being 30 years of age or older, intentionally engages in sexual intercourse with another person who is under 18, unless the two are married at the time of the intercourse.

State points out, there are important threshold qualifications that must be met in order to invoke this Court's original jurisdiction to issue a writ of certiorari. First and foremost, "the judgment below must be final, and there must be no other available basis for review."² Because Pepper is not seeking the review of any judgment below, the State contends there is no basis for certiorari review.

(3) We agree. Pepper has not presented his constitutional issue to any trial court for review in the first instance. Thus, there is no judgment below for this Court to review through a writ of certiorari. Accordingly, the Court has no jurisdiction to consider Pepper's argument, and his petition must be dismissed.

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

BY THE COURT:

/s/ Carolyn Berger
Justice

² *In re Butler*, 609 A.2d 1080, 1081 (Del. 1992).