

IN THE SUPREME COURT OF THE STATE OF DELAWARE

IN THE MATTER OF THE §
PETITION OF ERIC YOUNG FOR § No. 715, 2010
A WRIT OF MANDAMUS § Cr. ID No. 1008004209
 §

Submitted: December 6, 2010

Decided: January 3, 2011

Before **STEELE**, Chief Justice, **HOLLAND** and **BERGER**, Justices

ORDER

This third day of January 2011, it appears to the Court that:

(1) The petitioner, Eric Young, seeks to invoke this Court's original jurisdiction to issue an extraordinary writ of mandamus¹ to compel the Superior Court to dismiss the criminal charges stemming from his August 5, 2010 arrest and grant him unsecured bail. The State of Delaware has filed an answer requesting that Young's petition be dismissed. We find that Young's petition manifestly fails to invoke the original jurisdiction of this Court. Accordingly, the petition must be dismissed.

(2) The record before us reflects that Young was arrested on August 5, 2010 and charged with Possession With Intent to Deliver Cocaine and other related offenses. Young posted bail and was released, but was arrested again on August 24, 2010 and charged with Trafficking in Cocaine

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

and other related offenses. Young filed a motion to dismiss the charges stemming from his August 5, 2010 arrest for failure to timely indict. He subsequently was indicted on the charges stemming from his August 5, 2010 arrest on November 22, 2010. On November 24, 2010, the Superior Court dismissed his motion to dismiss the charges as moot. Young also unsuccessfully sought habeas corpus relief on the ground of failure to timely indict.

(3) Young argues that his instant petition for a writ of mandamus should be granted on the basis of Superior Court Criminal Rule 48(b), which provides that the Superior Court may dismiss a criminal complaint if there is unnecessary delay in presenting the charges to a grand jury, and the Superior Court's administrative policy, which provides that an indictment should be handed down within forty-five days of the date of an arrest.²

(4) 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, the petitioner 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

² *Browne v. Williams*, Del. Supr., No. 150, 1999, Hartnett, J. (Dec. 10, 1999).

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

duty.⁴ A petition for an extraordinary writ may not be used as a substitute for a timely-filed appeal.⁵

(5) There is no basis for the issuance of a writ of mandamus in this case. The record reflects that the claims asserted by Young in his habeas corpus petition as well as in his motion to dismiss were identical to the claims asserted here. Young failed to appeal from the Superior Court's October 22, 2010 denial of his petition for a writ of habeas corpus. Moreover, Young has the right to appeal the Superior Court's November 24, 2010 dismissal of his motion as part of any direct appeal, should he be convicted. Young may not use the instant petition for a writ of mandamus as a substitute for those alternative legal remedies.

(6) Finally, the Superior Court's authority to dismiss a criminal complaint for unnecessary delay is discretionary,⁶ as is its authority to set unsecured bail.⁷ As such, Young cannot demonstrate a clear right to the performance of a duty on the part of the Superior Court to either dismiss the criminal complaint or to grant him unsecured bail. His petition for a writ of mandamus must, therefore, be dismissed.

⁴ *Id.*

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

⁶ Super. Ct. Crim. R. 48(b).

⁷ Del. Code Ann. tit. 11, §2105(a).

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

BY THE COURT:

/s/ Randy J. Holland
Justice