

**SUPERIOR COURT
OF THE
STATE OF DELAWARE**

JOHN A. PARKINS, JR.
JUDGE

**NEW CASTLE COUNTY COURTHOUSE
500 NORTH KING STREET, SUITE 10400
WILMINGTON, DELAWARE 19801-3733
TELEPHONE: (302) 255-2584**

January 24, 2012

Mr. Robert L. Hackett, Jr.
114 Faraday Court
Bear, Delaware 19701-3064

Andrew G. Kerber, Esquire
Deputy Attorney General
820 N. French Street
Wilmington, Delaware 19801

**Re: Robert L. Hackett, Jr.
v. State of Delaware and
Justice of the Peace Court 10
Case No. N11A-04-014 JAP**

Dear Mr. Hackett and Mr. Kerber,

Petitioner, Robert L. Hackett, Jr., filed for a writ of *certiorari* reviewing an evidentiary matter from a proceeding at Justice of the Peace Court No. 10. The State moved to dismiss on behalf of respondents. The State argues that Petitioner's claim should be dismissed pursuant to Superior Court Rule of Civil Procedure 12(b)(6) for failure to state a claim.¹ In response Petitioner argues that he stated a claim upon which

¹ The State also argued dismissal was warranted for insufficient service of process under Superior Court Rule of Civil Procedure 12(b)(5) in their motion, but withdrew it in a letter sent to the court dated November 10, 2011. The court considers that argument abandoned.

relief can be granted and in the alternative seeks to amend his complaint to raise substantive and procedural due process claims.

Petitioner challenged a red light camera citation and was found responsible for the civil violation in Justice of the Peace Court No. 10. The substance of Petitioner's claim is that the Justice of the Peace permitted the admission of hearsay evidence, namely the photographic evidence of Petitioner's car going through a red light, in violation of Delaware Rule of Evidence 801.

The Delaware Supreme Court addressed requirements for a common law writ of *certiorari* in *Maddrey v. Justice of the Peace Court* 13,² which is controlling in this matter. The Court explained:

On a common law writ of *certiorari*, the Superior Court cannot look behind the face of the record. Rather, it can only review the record for the purpose of confirming an irregularity in asserting jurisdiction, an improper exercise of its power or the declaration of an improper remedy by the inferior tribunal. For a court to do anything more, such as combing the transcript for an erroneous evidentiary ruling as [Petitioner] asks us to sanction in this case, converts the limited *certiorari* review . . . into an impermissible full appellate review that is inconsistent with . . . the function of the common law writ.³

The court here is faced with a nearly identical issue. Petitioner seeks review of an evidentiary issue. That review would require the court to comb through the transcript. "[I]n these cases the evidence presented to the Justice of Peace Court, including the testimony reflected in the transcript, is not a proper part of the record subject to Superior Court's

² 956 A.2d 1204 (Del. 2008).

³ *Id.* at 1215.

review.”⁴ The court cannot review the claim Petitioner seeks the court to review, therefore Petitioner fails to state a claim on which relief can be granted. Accordingly, the State’s motion is **GRANTED** and the writ is **DISMISSED**.

Petitioner also sought leave to amend his application for a writ of *certiorari* to allege violations of his substantive and procedural due process rights. Permitting amendment of a meritless claim would be prejudicial to the State and burdensome to the judicial system.⁵ Petitioner had notice, opportunity to be heard, and a trial before an impartial tribunal.⁶ Petitioner received due process and will not be granted leave to amend for a meritless claim. Accordingly, Petitioner’s request for leave to amend is **DENIED**.

IT IS SO ORDERED.

John A. Parkins, Jr.
Superior Court Judge

cc: Prothonotary

⁴ *Id.* at 1216.

⁵ See *Oakwood Acceptance Corp. v. Penn*, 1994 WL 150864, at *4 (Del. Super. 1994) (“[I]n deciding whether to grant a motion to amend, [the court] may determine whether an amendment is legally sufficient on its face.” (citing *Itek Corp. v. Chicago Aerial Industries, Inc.*, 257 A.2d 232 (Del. Super. 1969), *aff’d*, 274 A.2d 141 (Del. 1971))).

⁶ *State ex rel. Caulk v. Nichols*, 267 A.2d 610, 612 (Super. Del. 1970), *aff’d*, 281 A.2d 24 (Del. 1971) (“In all cases, civil and criminal appeal procedures are the creatures of the constitution or statutes within the jurisdiction, and here civil appeals are permitted due process and equal protection of the law require only that the right to lodge such an appeal be available to all parties to any given controversy. . . . The right to review by appeal the proceedings of an inferior statutory tribunal in this state exists only to the extent to which it is granted the Constitution and Law of the state.”) (citations and internal quotations omitted).