

IN THE SUPREME COURT OF THE STATE OF DELAWARE

IN THE MATTER OF THE ERIC
GARNETT FOR A WRIT OF
MANDAMUS.

No. 17, 2000

Submitted: January 27, 2000

Decided: February 28, 2000

Before **VEASEY**, Chief Justice, **WALSH** and **BERGER**, Justices.

ORDER

This 28th day of February 2000, upon consideration of the petition of Eric Garnett (“Garnett”) for a writ of mandamus and the State of Delaware’s response thereto, it appears to the Court that:

(1) Garnett is pursuing postconviction relief pursuant to Superior Court Criminal Rule 61 (“Rule 61”) in the Superior Court.¹ On January 7, 2000, Garnett filed a petition for a writ of mandamus in this Court. The State of Delaware (“State”) has filed an answer and a motion to dismiss Garnett’s petition.

(2) Garnett complains that the Superior Court Commissioner has “arbitrarily failed and/or refused to act” on Garnett’s motion for

¹ In 1996, Garnett was convicted of first degree burglary, possession of a deadly weapon during the commission of a felony and other related offenses. Garnett was found to be an habitual offender and was sentenced to life in prison on the burglary charge. Garnett did not appeal his convictions and sentences to this Court.

postconviction relief and his related motions for an evidentiary hearing and the appointment of counsel. Garnett seeks an order from this Court compelling the Superior Court to act on his motions.

(3) This Court will issue a writ of mandamus to a trial court only when the petitioner can show that there is the clear right to the performance of the duty at the time of the petition, no other adequate remedy is available, and the trial court has failed or refused to perform its duty.² “This Court will not issue a writ of mandamus to compel a trial court to perform a particular judicial function, to decide a matter in a particular way, or to dictate the control of its docket.”³

(4) Garnett’s petition manifestly fails on its face to invoke this Court’s original jurisdiction. Garnett has not established that a motion for an evidentiary hearing is pending in the Superior Court. To the extent Garnett requests a writ of mandamus to compel the Superior Court Commissioner to act on his motion for postconviction relief and motion for the appointment of counsel, it is clear that Garnett’s petition is moot. By order dated May 19, 1999, the Commissioner denied Garnett’s motion for appointment of counsel.

² *In re Brookins*, Del. Supr., 736 A.2d 204, 206 (1999).

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

NOW THEREFORE IT IS ORDERED that the State's motion to dismiss is GRANTED. Garnett's petition for a writ of mandamus is DISMISSED.

BY THE COURT:

/s/ E. Norman Veasey
Chief Justice