

IN THE SUPREME COURT OF THE STATE OF DELAWARE

IN THE MATTER OF THE §
PETITION OF ARTHUR GOVAN § No. 151, 2000
FOR A WRIT OF MANDAMUS. §

Submitted: April 17, 2000
Decided: May 31, 2000

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

ORDER

This 31st day of May 2000, upon consideration of the petition for a writ of mandamus filed by Arthur Govan ("Govan") and the answer and motion to dismiss filed by the State of Delaware,¹ it appears to the Court that:

(1) In October 1992, a grand jury indicted Govan on four counts of first degree murder and seven other related charges. In June 1993, a Superior Court jury convicted Govan as charged. The Superior Court sentenced Govan to four life sentences plus 115 years in prison.

¹ On May 4, 2000, Govan filed a "reply brief" in response to the State's answer and motion to dismiss. The Court has not considered Govan's unsolicited reply brief. See Supr. Ct. R. 43(b)(ii) (providing that "unless the Court otherwise directs, no further submissions of the parties shall be accepted").

On direct appeal, Govan's convictions were affirmed.² Govan's subsequent applications for state postconviction relief and federal habeas relief were denied.³

(2) In March 2000, Govan applied to the Superior Court for a copy of transcripts of the grand jury proceedings in his case, including a transcript of the grand jury's return of the indictment against him. On March 29, 2000, the Superior Court denied Govan's request.

(3) In his petition in this Court, Govan contends that he has a constitutional right to review the grand jury proceedings. Govan seeks to ensure that the requisite number of grand jurors voted to indict him. Govan requests that this Court issue an Order directing that the Superior Court produce the grand jury records for his inspection.

(4) Govan is not entitled to the issuance of a writ of mandamus to further his efforts to review the records of the grand jury proceedings. Govan's claim, that he was not indicted by the requisite

² *Govan v. State*, Del. Supr., No. 363, 1993 Walsh, J., 1995 WL 48359 (Jan. 30, 1995) (ORDER).

³ *Govan v. State*, Del. Supr., No. 11, 1996, Holland, J., 1996 WL 69821 (Feb. 5, 1996) (ORDER); *Govan v. Snyder, et al.*, D. Del., C.A. No. 96-156-RRM (Feb. 4, 1997) (Order).

number of grand jurors, is entirely speculative. "There is a strong presumption that the grand jury has faithfully performed its duty in returning an indictment, and a defendant bears the heavy burden of overcoming it."⁴ Furthermore, Govan's challenge to the grand jury proceedings comes too late. Govan's failure to raise his claim before his trial constitutes a waiver of his claim.⁵

(5) This Court will issue a writ of mandamus to a trial court only when the petitioner can show that there is a clear right to the performance of the duty at the time of the petition.⁶ Govan has not demonstrated that he is entitled to the relief that he seeks, nor has he demonstrated that the Superior Court has arbitrarily refused to perform a duty owed to him.

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

⁴ *Malloy v. State*, Del. Supr., 462 A.2d 1088, 1094 (1983)

⁵ Super. Ct. Crim. R. 12(b)(2), (f); *Malloy v. State*, Del. Supr., 462 1088 (1983); *State v. Boyle*, Del.Gen.Sess., 61 A.2d 121, 125 (1948).

⁶ *In re Bordley*, Del. Supr., 545 A.2d 619, 620 (1988).

BY THE COURT:

s/Maurice A. Hartnett, III

Justice