

IN THE SUPREME COURT OF THE STATE OF DELAWARE

IN THE MATTER OF THE
PETITION OF KEVIN HOWARD
FOR A WRIT OF MANDAMUS.

No. 139, 1999

Submitted: January 10, 2000

Decided: February 14, 2000

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

ORDER

This 14th day of February 2000, upon consideration of the petition for a writ of mandamus filed by Kevin Howard (“Howard”) and the answer and motion to dismiss filed by the State of Delaware, it appears to the Court that:

(1) Howard has appealed the Superior Court’s denial of Howard’s motion for postconviction relief. In his related petition for a writ of mandamus in this Court, Howard complains that prison officials confiscated, and then lost, legal materials, including Howard’s copy of the trial transcript.

Howard states that he needs the trial transcript to prepare his opening brief on appeal. Howard asks that this Court issue a writ of mandamus to compel the prison to pay the cost of replacing the lost trial transcript.

(2) This Court's original jurisdiction to issue a writ of mandamus is "limited to instances when the respondent is a court or a judge thereof." *In re Hitchens*, Del. Supr., 600 A.2d 37, 38 (1991). This Court is without jurisdiction to issue a writ of mandamus to the Department of Correction. Consequently, Howard's petition for a writ of mandamus must be dismissed.

(3) Furthermore, to the extent Howard seeks to recover the trial transcript, or the cost thereof, Howard's petition for a writ of mandamus is moot. At the Court's direction, the Clerk of this Court has provided Howard with a copy of the trial transcript. Howard's opening brief and appendix are due to be filed by March 8, 2000.

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

BY THE COURT:

/s/ Randy J. Holland
Justice