

SUPREME COURT OF ARKANSAS

Gonder v. Glover

2015 Ark. 425 (2015) · No. CR-15-719 · Decided November 12, 2015

SUMMARY

The Arkansas Supreme Court denied Duane Jefferson Gonder’s petitions for writ of mandamus and to supplement his mandamus petition, holding that he failed to establish the requirements for mandamus relief. The court concluded that Gonder had not shown that a hearing on his coram-nobis petition was a ministerial duty or that he lacked an adequate remedy. His petition to hold the circuit court proceedings in abeyance was dismissed as moot.

CASE DETAILS

COURT	Supreme Court of Arkansas
WRITING FOR THE COURT	Per Curiam
JURISDICTION	Arkansas
DECIDED	November 12, 2015
DOCKET	CR-15-719
DISPOSITION	writ_denied
PROCEDURAL POSTURE	Gonder sought extraordinary relief from the Arkansas Supreme Court through petitions for a writ of mandamus and to supplement that petition, asking the court to compel a circuit-court hearing on his amended petition for writ of error coram nobis. He also sought to hold the circuit-court proceedings in abeyance.
STANDARD OF REVIEW	Mandamus is an extraordinary remedy, and the petitioner bears the burden of demonstrating entitlement to relief. The writ does not control a trial court's discretion or correct an erroneous exercise of discretion.
PRECEDENTIAL VALUE	Published Arkansas Supreme Court opinion
PARTIES	Duane Jefferson Gonder v. Hon. Don Glover, Circuit Judge

TOPICS

- post-conviction relief
- state post-conviction relief
- appellate procedure
- criminal procedure
- remedies

PRACTICE AREAS

criminal procedure

post-conviction relief

appellate procedure

extraordinary writs

QUESTIONS PRESENTED

1. Whether Gonder established entitlement to a writ of mandamus compelling the circuit judge to conduct a hearing on his coram-nobis petition.
2. Whether Gonder should be permitted to supplement his mandamus petition.
3. Whether the petition seeking to hold the circuit-court proceedings in abeyance remained justiciable.

HOLDINGS

1. Mandamus was not warranted because Gonder failed to establish that the circuit judge had failed to perform a ministerial duty, that he had a clear and certain right to the requested relief, and that no other adequate remedy existed.
2. A hearing on a coram-nobis petition filed directly in circuit court is not required when the petition clearly has no merit; whether the circuit court abused its discretion is reviewable on appeal rather than through mandamus.

KEY QUOTATIONS

“The primary function of the writ of mandamus is to require an inferior court or tribunal to act when it has improperly failed or declined to do so, and the writ is not applied to control the discretion of a trial court or tribunal or to correct an erroneous exercise of discretion.” (at 2)

“The writ is appropriate when the following three factors are established: (1) the duty to be compelled is ministerial and not discretionary; (2) the petitioner has shown a clear and certain right to the relief sought; and (3) the absence of any other adequate remedy.” (at 2)

FACTUAL BACKGROUND

Gonder entered a negotiated guilty plea in 2010 in two criminal cases in Drew County Circuit Court. He later filed an amended petition for writ of error coram nobis and sought a hearing, appointment of counsel, and modification of a circuit-court order. He then asked the Arkansas Supreme Court to compel the circuit judge to conduct a hearing and to stay the circuit-court proceedings.

PROCEDURAL HISTORY

Gonder pleaded guilty in 2010 to charges in two Drew County Circuit Court cases. After filing an amended coram-nobis petition in circuit court, he filed petitions in the Arkansas Supreme Court seeking mandamus to compel a hearing, supplementation of the mandamus petition, and a stay of the lower-court proceedings. The Supreme Court denied the mandamus petitions and held the stay petition moot.

DISPOSITION

CASES CITED

- Friar v. Erwin, 2014 Ark. 487, 450 S.W.3d 666
- Parker v. Crow, 2010 Ark. 371, 368 S.W.3d 902
- Lonoke Cnty. v. City of Lonoke, 2013 Ark. 465, 430 S.W.3d 669
- Westerman v. State, 2015 Ark. 69, 456 S.W.3d 374

OPINION

PER CURIAM.

Cite as 2015 Ark. 425 SUPREME COURT OF ARKANSAS No. CR-15-719 Opinion Delivered November 12, 2015 PRO SE PETITIONS FOR WRIT OF MANDAMUS, TO SUPPLEMENT PETITION FOR WRIT OF DUANE JEFFERSON GONDER MANDAMUS, AND TO HOLD PETITIONER CIRCUIT COURT PROCEEDINGS IN ABEYANCE V. [DREW COUNTY CIRCUIT COURT, NO. 22CR-09-99] HON. DON GLOVER, CIRCUIT JUDGE RESPONDENT PETITIONS FOR WRIT OF MANDAMUS AND TO SUPPLEMENT THE PETITION DENIED; PETITION TO HOLD CIRCUIT COURT PROCEEDINGS IN ABEYANCE MOOT.

PER CURIAM In 2010, petitioner Duane Jefferson Gonder entered a negotiated plea of guilty to charges in two criminal cases in Drew County Circuit Court. On July 23, 2015, Gonder filed an amended petition for writ of error coram nobis in the same court in which he sought to amend a previously filed petition for the writ that challenged the convictions in one of the two cases.¹ He also requested appointment of counsel and a hearing.

On September 8, 2015, Gonder filed the first of three pro se petitions in this court. In 1 A single judgment was entered for three charges in the two cases. Gonder discussed the separate charge in CR-10-53 as if he also challenged it.

The record before us, however, does not indicate that the amended petition was ever entered in that case, and the amended petition does not reference the case number. Cite as 2015 Ark. 425 the first petition, Gonder requested that we issue a writ of mandamus to compel the Honorable Don Glover, Circuit Judge, to conduct a hearing on the amended petition for writ of error coram nobis that Gonder had filed in circuit court.

Gonder later filed another petition in this court in which he sought to supplement his petition for the writ of mandamus. In addition, Gonder filed a third petition requesting that this court order the circuit court proceedings be held in abeyance.

We deny both the petition for the writ of mandamus and the petition to supplement it. The petition seeking a stay of the lower court proceedings is therefore moot. The primary function of the writ

of mandamus is to require an inferior court or tribunal to act when it has improperly failed or declined to do so, and the writ is not applied to control the discretion of a trial court or tribunal or to correct an erroneous exercise of discretion.

Friar v. Erwin, 2014 Ark. 487, 450 S.W.3d 666. This court has often held that mandamus is an appropriate remedy when a public officer is called upon to do a plain and specific duty, which is required by law and which requires no exercise of discretion or official judgment. *Parker v. Crow*, 2010 Ark. 371, 368 S.W.3d 902.

The writ is appropriate when the following three factors are established: (1) the duty to be compelled is ministerial and not discretionary; (2) the petitioner has shown a clear and certain right to the relief sought; and (3) the absence of any other adequate remedy. *Id.* As an applicant for an extraordinary writ, Gonder carries the burden to demonstrate that the relief he seeks is merited.

Lonoke Cnty. v. City of Lonoke, 2013 Ark. 465, 430 S.W.3d 669. He has failed in both his original petition for the writ of mandamus and the petition in which he seeks to supplement it to satisfy these factors to demonstrate that the writ is merited. 2 Cite as 2015 Ark. 425 In the petition for writ of mandamus, Gonder alleges that a hearing on his coram-nobis petition was necessary because he presented meritorious issues that should be resolved with an evidentiary hearing.

In his petition to supplement the mandamus petition, Gonder asserts that he filed a motion that sought to have an August 24, 2015 order modified and that he again sought a hearing on certain issues raised in his coram-nobis petition. When a coram-nobis petition is filed directly in the circuit court, a hearing is not required if the petition clearly has no merit, and the issue of whether the circuit court abused its discretion in that regard is one that this court may address on appeal from the order.

Westerman v. State, 2015 Ark. 69, 456 S.W.3d 374. Gonder has failed to show that granting a hearing is a ministerial duty that Judge Glover has failed to perform or the absence of another remedy. Gonder therefore fails to present an issue that satisfies the factors necessary for issuance of a writ of mandamus. Petitions for writ of mandamus and to supplement the petition denied; petition to hold circuit court proceedings in abeyance moot.