

SUPREME COURT OF THE STATE OF DELAWARE

In the Matter of the Petition of Paul E. Weber

No. 169, 2018 (Del. May 30, 2018) · No. No. 169, 2018 · Decided May 30, 2018

SUMMARY

The Delaware Supreme Court dismissed Paul E. Weber’s petition for a writ of mandamus seeking to require the Superior Court to allow a challenge to his 2001 Forgery in the Second Degree conviction under Superior Court Criminal Rule 35(a). The Court held that Weber had not shown a clear right to performance of a duty, an arbitrary refusal by the Superior Court, or the absence of an adequate appellate remedy. The State’s motion to dismiss was granted.

CASE DETAILS

COURT	Supreme Court of the State of Delaware
WRITING FOR THE COURT	James T. Vaughn, Jr.; Valihura, Justice; Vaughn, Justice; Seitz, Justice
JURISDICTION	Delaware
DECIDED	May 30, 2018
DOCKET	No. 169, 2018
DISPOSITION	dismissed
PROCEDURAL POSTURE	Weber petitioned the Delaware Supreme Court for an original-jurisdiction writ of mandamus directing the Superior Court to permit him to challenge his 2001 Forgery in the Second Degree conviction under Superior Court Criminal Rule 35(a). The State moved to dismiss.
STANDARD OF REVIEW	A writ of mandamus issues only upon a showing of a clear right to performance of a duty, the absence of another adequate remedy, and the Superior Court’s arbitrary failure or refusal to perform that duty.
PRECEDENTIAL VALUE	Published Delaware Supreme Court per curiam order
PARTIES	Paul E. Weber v. State of Delaware

TOPICS

[appellate procedure](#)[post-conviction relief](#)[criminal procedure](#)[writ of certiorari](#)[final judgment rule](#)

PRACTICE AREAS

QUESTIONS PRESENTED

1. Whether the Delaware Supreme Court should issue a writ of mandamus directing the Superior Court to permit Weber to challenge his Forgery in the Second Degree conviction under Superior Court Criminal Rule 35(a).
2. Whether mandamus is available when the petitioner had an adequate remedy through the ordinary appellate process but failed to pursue it.

HOLDINGS

1. Mandamus was unavailable because Weber did not establish a clear right to the requested relief, the Superior Court's arbitrary refusal or failure to perform a duty, or the absence of another adequate remedy.

KEY QUOTATIONS

“A writ of mandamus will only issue if the petitioner can show: (i) a clear right to the performance of a duty; (ii) that no other adequate remedy is available; and (iii) that the Superior Court has arbitrarily failed or refused to perform its duty.” (3)

“A petitioner who has an adequate remedy in the appellate process may not use the extraordinary writ process as a substitute for a properly filed appeal.” (3)

FACTUAL BACKGROUND

In 2001, Weber was convicted of Forgery in the Second Degree and Misdemeanor Theft and received thirty-day Level I sentences. His direct criminal appeal was dismissed because the Delaware Supreme Court lacked jurisdiction over an appeal involving a sentence of no more than one month or a fine of no more than \$100. The forgery conviction was later used as a predicate offense in habitual-offender proceedings. Weber subsequently attempted to challenge the forgery conviction under Rule 35(a), but he did not appeal the Superior Court's April 20, 2016 order that he identified as denying relief.

PROCEDURAL HISTORY

A Superior Court jury convicted Weber in 2001 of Forgery in the Second Degree and Misdemeanor Theft and imposed thirty-day Level I sentences. The Delaware Supreme Court dismissed his direct appeal for lack of appellate jurisdiction because the sentence did not exceed one month or a \$100 fine. After later convictions and habitual-offender proceedings, the Supreme Court held that the forgery conviction qualified as a predicate offense and noted that Weber could seek relief under Rule 35(a) or by certiorari. Weber claimed that the Superior Court rejected later efforts to challenge the forgery conviction, but he did not appeal the Superior Court's April 20, 2016 order. The Supreme Court dismissed the mandamus petition.

DISPOSITION

dismissed

CASES CITED

- Weber v. State, 2002 WL 31235418, at *1 (Del. Oct. 4, 2002)
- Weber v. State, 971 A.2d 135, 158-60 (Del. 2009)
- Weber v. State, 38 A.3d 271 (Del. 2012)
- In re Bordley, 545 A.2d 619, 620 (Del. 1988)
- In re Noble, 2014 WL 5823030, at *1 (Del. Nov. 6, 2014)
- Matushefske v. Herlihy, 214 A.2d 883, 885 (Del. 1965)

OPINION

PER CURIAM.

IN THE SUPREME COURT OF THE STATE OF DELAWARE IN THE MATTER OF THE § PETITION OF PAUL E. WEBER § No. 169, 2018 FOR A WRIT OF MANDAMUS § Submitted: April 23, 2018 Decided: May 30, 2018 Before VALIHURA, VAUGHN, and SEITZ, Justices. ORDER This 30th day of May 2018, upon consideration of Paul E. Weber’s petition for a writ of mandamus and the State’s answer and motion to dismiss,¹ it appears to the Court that: (1) Weber seeks to invoke the original jurisdiction of this Court, under Supreme Court Rule 43, to issue a writ of mandamus ordering the Superior Court to allow him to challenge his Forgery in the Second Degree conviction under Superior Court Criminal Rule 35(a).

We conclude that Weber’s petition manifestly fails to invoke the original jurisdiction of this Court. The petition must therefore be dismissed. (2) In 2001, a Superior Court jury found Weber guilty of Forgery in the Second Degree and Misdemeanor Theft. Weber was sentenced to 30 days of Level 1. On May 11, 2018, Weber filed a motion for leave to respond to the answer and motion to dismiss.

Supreme Court Rule 43 provides that after an answer is filed “unless the Court otherwise directs, no further submissions of the parties shall be accepted.” The Court did not direct the filing of further submissions and finds no basis to do so after considering the appellant’s motion. V incarceration for each conviction. This Court dismissed Weber’s direct appeal based on its lack of jurisdiction to hear a criminal appeal unless the sentence imposed is a term of imprisonment exceeding one month or a fine exceeding \$100.² (3) After Weber was convicted of Attempted Robbery in the First Degree and Attempted Carjacking in the First Degree in 2005, the Superior Court granted the State’s petition to declare Weber an habitual offender under 11 Del C. § 4214(a).

Weber’s Forgery in the Second Degree conviction was one of the predicate offenses. On appeal, Weber argued that, among other things, his Forgery in the Second Degree conviction did not qualify as a predicate offense under 11 Del. C. § 4214(a) because he had no right to appeal. This

Court held that Weber's Forgery in the Second Degree conviction was a qualifying offense under § 4214(a) and the unavailability of a direct appeal did not change this result.³ We noted that Weber could have filed a motion to correct an illegal sentence under Superior Court Criminal Rule 35(a) or a petition for a writ of certiorari.⁴ We reversed the Attempted Robbery in the First Degree conviction on other grounds, remanded for a new trial, and affirmed the Attempted Carjacking in the First Degree conviction.⁵ 2 Weber v. State, 2002 WL 31235418, at *1 (Del.

Oct. 4, 2002) (citing Del. Const. art IV, § 11(1)(b)). 3 Weber v. State, 971 A.2d 135, 158-60 (Del. 2009). 4 Id. at 159-60. 5 Id. at 143. 2 (4) On remand, Weber was convicted of Attempted Robbery in the First Degree.

The State again filed a motion to declare Weber an habitual offender under § 4214(a). The Superior Court granted the motion and sentenced Weber to twenty- five years of Level V incarceration for Attempted Robbery in the First Degree.

We affirmed Weber's conviction and sentence on direct appeal.⁶ (5) In his petition for a writ of mandamus, Weber argues that the Superior Court has not allowed him to challenge his Forgery in the Second Degree conviction under Superior Court Criminal Rule 35(a). He claims that the Superior Court rejected his attempts to do so in an April 30, 2013 order denying his motion for appointment of counsel and an April 20, 2016 order denying his motion for default, summary, and relief of judgment in his Forgery in the Second Degree case.

The record does not reflect that Weber appealed the April 20, 2016 order. (6) A writ of mandamus will only issue if the petitioner can show: (i) a clear right to the performance of a duty; (ii) that no other adequate remedy is available; and (iii) the Superior Court has arbitrarily failed or refused to perform its duty.⁷ "[I]n the absence of a clear showing of an arbitrary refusal or failure to act, this Court will not issue a writ of mandamus to compel a trial court to perform a 6 Weber v. State, 38 A.3d 271 (Del.

2012). 7 In re Bordley, 545 A.2d 619, 620 (Del. 1988). 3 particular judicial function, to decide a matter in a particular way, or to dictate the control of its docket."⁸ (7) Weber has not satisfied the criteria for issuance of a writ of mandamus. He has not shown that the Superior Court arbitrarily refused to perform a duty owed to him.

In addition, he could have filed a notice of appeal from the Superior Court's April 20, 2016 order, but did not do so. A petitioner who has an adequate remedy in the appellate process may not use the extraordinary writ process as a substitute for a properly filed appeal.⁹ NOW, THEREFORE, IT IS ORDERED that the State's motion to dismiss is GRANTED.

The petition for the issuance of a writ of mandamus is DISMISSED. BY THE COURT: /s/ James T. Vaughn, Jr. Justice 8 Id. 9 In re Noble, 2014 WL 5823030, at *1 (Del. Nov. 6, 2014); Matushefske v. Herlihy, 214 A.2d 883, 885 (Del. 1965). 4

