

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)

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