

IN THE SUPREME COURT OF THE STATE OF DELAWARE

IN THE MATTER OF THE §
PETITION OF PETER AND § No. 723, 2011
PATRICIA KOSTYSHYN FOR AN §
EXTRAORDINARY WRIT §

Submitted: January 13, 2012

Decided: February 7, 2012

Before **STEELE**, Chief Justice, **JACOBS** and **RIDGELY**, Justices.

ORDER

This 7th day of February 2012, it appears to the Court that:

(1) The petitioners, Peter and Patricia Kostyshyn, seek to invoke this Court’s original jurisdiction to issue an extraordinary writ of mandamus¹ to the Superior Court of the State of Delaware, the Attorney General of the State of Delaware, the Office of the Public Defender, several individual prosecutors and public defenders, and a criminal defendant named John Frink in connection with a Superior Court hearing on November 23, 2011. The State of Delaware has filed an answer requesting that the petition be dismissed. We find that the Kostyshyns’ petition manifestly fails to invoke the original jurisdiction of this Court. Accordingly the petition must be dismissed.

¹ Del. Const. art. IV, §11(5); Supr. Ct. R. 43.

(2) The Superior Court’s November 23, 2011 hearing appears to have been a violation of probation (“VOP”) hearing for John Frink, who earlier had pleaded guilty to Theft of a Motor Vehicle, which resulted in a criminal sentence for Frink and an order of restitution on behalf of the Kostyshyns. The Kostyshyns allege that the Superior Court judge in charge of the VOP proceedings was disrespectful to Patricia Kostyshyn and that the Superior Court and the prosecutors and public defenders involved acted in concert to shield Frink from the appropriate punishment, resulting in Frink being discharged as unimproved on the VOP and the restitution amount being reduced to a civil judgment.

(3) A writ of mandamus is an extraordinary remedy issued by this Court to compel a lower court to perform a duty.² As a condition precedent to the issuance of the writ, the petitioner must demonstrate that a) he has a clear right to the performance of the duty; b) no other adequate remedy is available; and c) the trial court has arbitrarily failed or refused to perform its duty.³

(4) There is no basis for the issuance of a writ of mandamus in this case. First, the Kostyshyns have failed to demonstrate a clear right to the performance of a duty on the part of the Superior Court, which the Superior

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

³ *Id.*

Court has arbitrarily failed or refused to perform. Moreover, this Court has no jurisdiction to issue a writ of mandamus to the additional individuals and agencies named in the petition.⁴

NOW, THEREFORE, IT IS ORDERED that the Kostyshyns' petition for a writ of mandamus is DISMISSED.

BY THE COURT:

/s/ Henry duPont Ridgely
Justice

⁴ Del. Const. art. IV, §11(5).