## IN THE SUPREME COURT OF THE STATE OF DELAWARE

IN THE MATTER OF THE §

PETITION OF HARRY W. § No. 588, 2012

ANDERSON FOR A WRIT OF \$ MANDAMUS \$

Submitted: November 19, 2012 Decided: November 29, 2012

Before STEELE, Chief Justice, JACOBS and RIDGELY, Justices

## ORDER

This 29<sup>th</sup> day of November 2012, it appears to the Court that:

- (1) The petitioner, Harry W. Anderson, seeks to invoke this Court's original jurisdiction to issue an extraordinary writ of mandamus<sup>1</sup> to compel the Superior Court to dismiss the criminal charges against him on the ground that there was undue delay between his arrest and his indictment pursuant to Superior Court Criminal Rule 48(b). The State of Delaware has filed an answer requesting that Anderson's petition be dismissed. We find that Anderson's petition manifestly fails to invoke the original jurisdiction of this Court. Accordingly, the petition must be dismissed.
- (2) The record before us reflects that, on June 22, 2012, Anderson was arrested in connection with three burglaries at jewelry stores in New Castle County. On August 29, 2012, Anderson, through counsel, filed a

<sup>&</sup>lt;sup>1</sup> Del. Const. art. IV, §11(5); Supr. Ct. R. 43.

motion to dismiss the charges against him pursuant to Rule 48(b). The State indicted Anderson on September 24, 2012 and the Superior Court denied his motion as moot the next day. Acting *pro se*, Anderson filed a second motion to dismiss on October 19, 2012. The Superior Court referred the motion to Anderson's counsel and no further action has been taken on the motion since that time. The record before us reflects that Anderson's trial on the burglary charges is currently scheduled to begin on January 24, 2013.

- (3) A writ of mandamus is an extraordinary remedy issued by this Court to compel a trial court to perform a nondiscretionary duty.<sup>2</sup> 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.<sup>3</sup> A petition for a writ of mandamus may not be used as a substitute for a timely-filed appeal.<sup>4</sup>
- (4) There is no basis for the issuance of a writ of mandamus in this case. First, Anderson has failed to demonstrate that the Superior Court owes him a duty that it has arbitrarily failed or refused to perform, since the Superior Court's authority to dismiss a criminal complaint on the ground of

<sup>&</sup>lt;sup>2</sup> In re Bordley, 545 A.2d 619, 620 (Del. 1988).

<sup>&</sup>lt;sup>3</sup> Id

<sup>&</sup>lt;sup>4</sup> *Matushefske v. Herlihy*, 214 A.2d 883, 885 (Del. 1965).

unnecessary delay is discretionary.<sup>5</sup> Moreover, Anderson has the right to appeal the Superior Court's denial of his motion to dismiss as part of any direct appeal, should he be convicted of the criminal charges against him.<sup>6</sup> His petition for a writ of mandamus may not be used as a substitute for that alternative legal remedy.<sup>7</sup> We, therefore, conclude that Anderson's petition for a writ of mandamus must be dismissed.

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

BY THE COURT:

/s/ Henry duPont Ridgely Justice

<sup>&</sup>lt;sup>5</sup> *In re Young*, Del. Supr., No. 715, 2010, Holland, J. (Jan. 3, 2010) (citing Super. Ct. Crim. R. 48(b)).

<sup>&</sup>lt;sup>6</sup> Id.

<sup>&</sup>lt;sup>7</sup> Id.