

IN THE SUPREME COURT OF THE STATE OF DELAWARE

IN THE MATTER OF THE §
PETITION OF AUGUSTUS § No. 167, 2013
HEBREW EVANS, JR., FOR A §
WRIT OF MANDAMUS §

Submitted: April 11, 2013

Decided: April 29, 2013

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

ORDER

This 29th day of April 2013, it appears to the Court that:

(1) The petitioner, Augustus Hebrew Evans, Jr., seeks to invoke this Court's original jurisdiction to issue an extraordinary writ of mandamus¹ to compel the Superior Court to rule on the merits of his latest postconviction motion pursuant to Superior Court Criminal Rule 61(i) (5) rather than base its decision on Rule 61's procedural bars. The State of Delaware has filed an answer requesting that Evans' petition be dismissed. We find that Evans' petition manifestly fails to invoke the original jurisdiction of this Court. Accordingly, the petition must be dismissed.

(2) The record before us reflects that, in 2007, Evans was found guilty by a Superior Court jury of Assault in the Second Degree, two counts of Possession of a Deadly Weapon During the Commission of a Felony, Aggravated Menacing and

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

Resisting Arrest. This Court affirmed Evans' convictions on direct appeal.² Since that time, Evans has filed two postconviction motions. His appeal of the Superior Court's denial of the second motion is currently on appeal in this Court.³

(3) A writ of mandamus is an extraordinary remedy issued by this Court to compel a trial court to perform a duty.⁴ 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 writ; b) no other adequate remedy is available; and c) the trial court has arbitrarily failed or refused to perform its duty.⁵ This Court will not issue a writ of mandamus to compel a trial court to perform a particular judicial function, to decide a matter in a particular way or to dictate control of its docket.⁶ Nor may the petitioner use a petition for a writ of mandamus to short circuit the regular appellate process.⁷

(4) There is no basis for the issuance of a writ of mandamus in this case. Evans has failed to demonstrate that the Superior Court has arbitrarily failed or refused to perform a duty owed to him, only that the Superior Court did not decide his motion for postconviction relief in the manner he wanted. Evans' appeal from the Superior Court decision that is the subject of his instant petition is currently

² *Evans v. State*, 2009 WL 367728 (Del. Feb. 13, 2009).

³ *Evans v. State*, No. 166, 2013.

⁴ *In re Bordley*, 545 A.2d 619, 620 (Del. 1988).

⁵ *Id.*

⁶ *Id.*

⁷ *Matushefske v. Herlihy*, 214 A.2d 883, 885 (Del. 1965).

pending in this Court. Evans may not be permitted to short circuit the ordinary appellate process by means of a petition for a writ of mandamus.

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

BY THE COURT:

/s/ Henry duPont Ridgely
Justice