

IN THE SUPREME COURT OF THE STATE OF DELAWARE

IN THE MATTER OF THE §
PETITION OF KEVIN EPPERSON § No. 324, 2025
FOR A WRIT OF MANDAMUS §
 §

Submitted: August 25, 2025
Decided: November 5, 2025

Before **VALIHURA, TRAYNOR**, and **GRIFFITHS**, Justices.

ORDER

After consideration of the petition for a writ of mandamus and the State of Delaware’s answer and motion to dismiss, it appears to the Court that:

(1) Kevin Epperson has petitioned the Court under Supreme Court Rule 43 to issue a writ of mandamus directing the Superior Court to address the merits of two pending motions for postconviction relief in Criminal Action No. 9408009291. Under the unusual circumstances presented here, we will issue the writ directing the Superior Court to act, as it deems appropriate, on Epperson’s pending motions.

(2) The record reflects that a Superior Court jury found Epperson guilty of kidnapping and second-degree unlawful sexual contact in 1996, and the Superior Court sentenced Epperson to a total of 52 years of incarceration followed by probation. We affirmed Epperson’s convictions and sentence on direct appeal.¹ In

¹ *Epperson v. State*, 1997 WL 70813 (Del. Feb. 6, 1997).

the intervening years, Epperson has filed dozens of unsuccessful motions for postconviction relief.

(3) On August 3, 2023, a Superior Court commissioner issued a report recommending that Epperson’s twenty-ninth motion for postconviction relief be summarily dismissed. The commissioner also recommended that any further motions filed by Epperson be “docketed, but that those motions not be referred to a judicial officer for further consideration.”² A Superior Court judge adopted the commissioner’s report and recommendation in its entirety. Since then, Epperson has filed two motions for postconviction relief. The Superior Court docket shows that these motions have been docketed and placed in Epperson’s court file but not referred to a judicial officer for review.

(4) Seeking relief, Epperson filed the present petition for a writ of mandamus. The Delaware Constitution confers original jurisdiction upon this Court to issue extraordinary writs.³ A writ of mandamus will issue to a trial court only if the petitioner can show that: (i) he has a clear right to the performance of a duty; (ii) no other adequate remedy is available; and (iii) the trial court has arbitrarily failed or refused to perform its duty.⁴

² *State v. Epperson*, 2023 WL 4996695, at *2 (Del. Super. Ct. Aug. 3, 2023).

³ Del. Const. art. IV, § 11(e).

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

(5) We considered a similar situation in *Biggins v. State*, albeit in a different procedural posture, where a Superior Court judge “parked” Biggins’ successive motion for postconviction relief in Biggins’ court file but declined to rule on it.⁵ The trial court judge advised Biggins that his failure to act on Biggins’ motion appeared to foreclose Biggins’ ability to seek appellate review. On appeal, this Court observed that Superior Court Criminal Rule 61 requires that a motion for postconviction relief be presented to a judge for preliminary consideration unless it is returned to the movant as a non-conforming document.⁶ Because Biggins’ motion had not been returned to him as a non-conforming document, we remanded the matter to the Superior Court for preliminary consideration of Biggins’ motion and the issuance of an appropriate order.

(6) We likewise conclude that Epperson has a clear right to have his motions for postconviction relief presented to a Superior Court judge for preliminary consideration and that the Superior Court arbitrarily refused to perform its duty. We note, however, that under 10 *Del. C.* § 8803(e), a trial court may enjoin a *pro se* defendant from filing without leave of the court if it determines that the defendant’s frivolous filings constitute an abuse of the judicial process.⁷ When so enjoined, any

⁵ *Biggins v. State*, 2018 WL 3213791, at *1 (Del. June 29, 2018).

⁶ *Id.* (citing Del. Super. Ct. Crim. R. 61(d)); Del. Super. Ct. Crim. R. 61(c)(1) (providing that if a motion does not substantially comply with the requirements of Rule 61(b), the prothonotary must return it to the movant with a statement of the reason for its return).

⁷ *See, e.g., State v. Johnson*, 2024 WL 4751395 (Del. Super. Ct. Nov. 12, 2024) (finding that the defendant continued to abuse the judicial process by filing frivolous motions and directing the

of the defendant's future requests to file claims must be accompanied by an affidavit certifying that: (i) the claims sought to be litigated have never been raised or disposed of previously in any court; (ii) the facts alleged are true and correct; (iii) the affiant has made a diligent and good faith effort to determine what relevant case law controls the legal issues raised; (iv) the affiant has no reason to believe the claims are foreclosed by controlled law; and (v) the affiant understands that the affidavit is made under penalty of perjury.⁸ Although the Superior Court has repeatedly found that Epperson's filings contain repetitive claims of error that are procedurally barred, as best we can tell, the Court has not invoked Section 8803(e). Because we are reluctant to conclude that a trial court can *completely* foreclose a defendant's access to judicial review of his convictions and sentence, we grant Epperson's petition. In doing so, we acknowledge that Epperson is a serial abuser of the court's time and scarce judicial resources; we quibble only with the manner in which the Superior Court tabled Epperson's motions.

NOW, THEREFORE, IT IS HEREBY ORDERED that the writ of mandamus is GRANTED. The Superior Court is directed to consider the petitioner's pending

prothonotary to refuse any future filing from him *unless* it was accompanied by the court's filing fee or a completed motion to proceed *in forma pauperis* with a sworn affidavit that it meets the certification requirements under Section 8803(e)).

⁸ 10 Del. C. § 8803(e).

motions for postconviction relief and the propriety of enjoining Epperson from filing without leave of the court in the future.

BY THE COURT:

/s/ Gary F. Traynor
Justice