

Not for Publication

IN THE SUPREME COURT OF THE VIRGIN ISLANDS

IN RE: RUBEN RIVERA-MORENO,  
Petitioner.

)  
) S. Ct. Civ. No. 2013-0046  
) Re: Super. Ct. Civ. No. 111/2010 (STX)  
)  
)  
)

On Petition for Writ of Mandamus

BEFORE: RHYS S. HODGE, Chief Justice; MARIA M. CABRET, Associate Justice; and  
IVE ARLINGTON SWAN, Associate Justice.

ATTORNEYS:

Kele C. Onyejekwe, Esq.  
Appellate Public Defender  
St. Thomas, U.S.V.I.  
*Attorney for Petitioner.*

OPINION OF THE COURT

PER CURIAM.

This matter is before the Court on a June 10, 2013 petition for writ of mandamus filed by Ruben Rivera-Moreno, which requests that this Court mandate that the Nominal Respondent—the Superior Court judge assigned to consider his petition for writ of habeas corpus—personally hold a hearing rather than referring the matter to a Superior Court magistrate. For the reasons that follow, we deny the petition.

I. PROCEDURAL HISTORY

This matter has been before the Court three previous times. On June 16, 2009, this Court received a *pro se* petition for writ of mandamus, erroneously filed with the District Court of the Virgin Islands but subsequently transmitted to this Court, in which Rivera-Moreno stated that he had attempted to file a petition for writ of habeas corpus with the Superior Court in December of

2007, but that the Superior Court Clerk's Office repeatedly refused to accept the filing. When the Clerk of the Superior Court subsequently docketed Rivera-Moreno's habeas corpus petition as Super. Ct. Civ. No. 111/2010 (STX), this Court dismissed that petition as moot. *In re Rivera-Moreno*, S. Ct. Civ. No. 2009-0017, slip op. at 1-2 (V.I. Mar. 17, 2010). Nearly six months later, Rivera-Moreno filed a second *pro se* petition, alleging that the Superior Court judge assigned to the matter had taken no action to move his case forward. See *In re Elliot*, 54 V.I. 423, 429-30 (V.I. 2010) (holding that habeas corpus petitions require expedited consideration). Shortly thereafter, that judge issued an order denying a motion to dismiss filed by the government and scheduling a hearing; consequently, this Court dismissed the second petition as moot. *In re Rivera-Moreno*, S. Ct. Civ. No. 2010-0066, slip op. at 2 (V.I. Jan. 12, 2011). Later that month, the government appealed the denial of its motion to dismiss, which this Court proceeded to dismiss for lack of jurisdiction. *Gov't of the V.I. v. Rivera-Moreno*, S. Ct. Civ. No. 2011-0007, slip op. at 3 (V.I. Mar. 9, 2011).

At some unspecified point in the proceedings, the Office of the Territorial Public Defender entered an appearance as Rivera-Moreno's counsel. Through his counsel, Rivera-Moreno filed numerous motions requesting the Superior Court to set a hearing date. Ultimately, the Superior Court, in an October 30, 2012 Order, scheduled a hearing for November 2, 2012; however, that hearing was subsequently continued due to the failure of the government to appear.

Shortly thereafter, the Superior Court judge assigned to Rivera-Moreno's habeas corpus petition retired, and the Clerk of the Superior Court assigned a new judge—the Nominal Respondent—to the case. On February 20, 2013, the Nominal Respondent, the Presiding Judge, and the Clerk of the Superior Court executed Superior Court Form D, "Request for Designation of Magistrate." Form D reads, in pertinent part, as follows:

Pursuant to 4 V.I.C. § 123(b)(1) and (2), I hereby request that a Magistrate of the Superior Court be designated as follows. Please check the appropriate line.

\_\_\_ (A) to hear and determine the following pretrial matter:

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\_\_\_ (B) To conduct hearings and submit proposed findings of fact and make recommendations for the disposition by a Superior Court judge of any motion of applications for post trial relief made by individuals convicted of criminal offenses.

\_\_\_ (C) To conduct hearings and submit proposed findings of fact and recommendations for the disposition by a Superior Court judge of any motion of prisoner petitions challenging conditions of confinement.

The Nominal Respondent checked option “C,” and both he and the Presiding Judge signed the document. As a result, the Clerk of the Superior Court assigned the matter to a Superior Court magistrate.

Rivera-Moreno filed the instant mandamus petition with this Court on June 10, 2013. In his petition, Rivera-Moreno alleges that the February 22, 2013 Designation is void because (1) he is not challenging the conditions of his confinement, but requesting that his convictions be invalidated, and (2), in any event, that Superior Court judges lack the authority to “outsource” consideration of habeas corpus petitions to Superior Court magistrates.

## **II. JURISDICTION AND LEGAL STANDARD**

This Court possesses jurisdiction over original proceedings for extraordinary writs, such as a writ of mandamus. *See* 4 V.I.C. § 32(b). To obtain a writ of mandamus, “a petitioner must establish that it has no other adequate means to attain the desired relief and that its right to the writ is clear and indisputable.” *In re People of the V.I.*, 51 V.I. 374, 382 (V.I. 2009) (citing *In re LeBlanc*, 49 V.I. 508, 517 (V.I. 2008)). However, “even if the first two prerequisites have been

met, the issuing court, in the exercise of its discretion, must be satisfied that the writ is appropriate under the circumstances.” *In re Joseph*, S. Ct. Civ. No. 2013-0015, 2013 WL 1401217, at \*3 (V.I. Apr. 5, 2013) (quoting *Cheney v. U.S. Dist. Court for the D.C.*, 542 U.S. 367, 380-81 (2004)).

### **III. DISCUSSION**

We conclude that Rivera-Moreno has failed to meet this high burden. Although Rivera-Moreno alleges that he lacks an adequate alternate means of attaining the desired relief, there is one obvious avenue available to him: allowing the Superior Court magistrate to conduct a hearing and submit proposed findings to the Nominal Respondent consistent with the February 22, 2013 Designation, and then appealing any adverse decision by the Nominal Respondent to this Court.

Perhaps anticipating that the potential for a later appeal may defeat his mandamus petition, Rivera-Moreno invokes our *Elliot* decision for the proposition that his statutory right to an expedited hearing on his habeas corpus petition continues to be violated, and that the purportedly unlawful referral to the Superior Court magistrate will only serve to further delay a final adjudication of his claims. Since the Nominal Respondent has only recently been assigned to this case, and therefore was not responsible for those prior delays, we question whether those delays should be imputed unto him personally. *See In re Fleming*, 56 V.I. 460, 468 (V.I. 2012) (“[M]andamus is personal to the judge.”) (quoting *In re Roseland Oil & Gas, Inc.*, 68 S.W.3d 784, 786 (Tex. App. 2001)). Nevertheless, in the interests of justice, we proceed to address the second factor: whether Rivera-Moreno possesses a clear and indisputable right to have a Superior Court judge adjudicate his petition without the assistance of a Superior Court magistrate.

When a petitioner argues that he possesses a clear and indisputable right to have a judge issue a legally correct ruling, “mandamus is only appropriate ‘to correct judicial action that is clearly contrary to well-settled law’—specifically, decisions that ‘ignore[] clear, binding precedent from a court of superior jurisdiction.’” *In re Morton*, 56 V.I. 313, 319-20 (V.I. 2012) (quoting *In re People*, 51 V.I. at 387). Given that section 123 of title 4 of the Virgin Islands Code—which delineates the jurisdiction of Superior Court magistrates—is virtually identical to the structure of the statute setting out the authority of federal magistrate judges, 28 U.S.C. § 636, we have repeatedly held that Virgin Islands courts should look to federal judicial decisions interpreting the federal statute for guidance in interpreting our local statute. *See, e.g., In re Estate of Small*, 57 V.I. 416, 428 n.5 (V.I. 2012); *H & H Avionics, Inc. v. V.I. Port Auth.*, 52 V.I. 458, 461 (V.I. 2009).

In this case, the pertinent provisions of both statutes are virtually identical, based on a word-for-word comparison. *Compare* 4 V.I.C. § 123(b)(2) (“Upon designation by a judge . . . a magistrate may . . . [c]onduct hearings, including evidentiary hearings, to submit proposed findings of fact and recommendations for the disposition, by a Superior Court judge . . . of applications of post trial relief made by individuals convicted of criminal offenses. . . .”) with 28 U.S.C. § 636(b)(1)(B) (“a judge may also designate a magistrate judge to conduct hearings, including evidentiary hearings, and to submit to a judge . . . proposed findings of fact and recommendations for the disposition, by a judge . . . of applications for posttrial relief made by individuals convicted of criminal offenses . . .”). Although Rivera-Moreno maintains that “[a] habeas corpus application is not a form of post trial relief,” (Pet. 16), we are persuaded by the federal appellate courts that have found to the contrary. *See, e.g., Sullivan v. Cuyler*, 723 F.2d 1077, 1085 (3d Cir. 1983) (“Section 636(b)(1)(B) . . . allows a judge to designate a magistrate to

conduct evidentiary hearings on ‘applications for posttrial relief made by individuals convicted of criminal offenses.’ The [government] maintains that a habeas petition does not come within this statutory language. We disagree. . . .’); *Hinman v. McCarthy*, 676 F.2d 343, 346-47 (9th Cir. 1982). See generally *McCarthy v. Bronson*, 500 U.S. 136, 140 (1991) (statutory authority to refer “applications for posttrial relief made by individuals convicted of criminal offenses” to magistrates was “intended [by Congress] to include . . . applications for habeas corpus relief”). See also KENT SINCLAIR, PRACTICE BEFORE FEDERAL MAGISTRATE JUDGES §§ 21.01 to 21.05 (1983 and 2012 Supp.) (collecting cases).

Likewise, we are not persuaded by Rivera-Moreno’s claim that the Nominal Respondent, by checking choice “C” rather than choice “B” on Superior Court Form D, effectively converted Rivera-Moreno’s habeas corpus petition into a civil rights action. The record contains no indication that the Nominal Respondent, by selecting choice “C,” made anything other than a simple clerical error, given that Rivera-Moreno’s habeas corpus petition and other filings in the underlying matter clearly reflect that Rivera-Moreno is challenging his convictions rather than the conditions of his confinement. See *State v. Jarman*, 535 S.E.2d 875, 878-79 (N.C. Ct. App. 2000) (obvious clerical errors on routine form documents generated by the court, such as inadvertent checking of boxes, should be disregarded when it is clear “that the trial judge did not exercise any judicial discretion or undertake any judicial reasoning” when filling out the form) (collecting cases). And to the extent Rivera-Moreno disagrees with our characterization of the Nominal Respondent’s selection of choice “C” as a clerical error, he has the option of simply requesting that the Nominal Respondent clarify his intentions.

#### IV. CONCLUSION

For the foregoing reasons, Rivera-Moreno has not established that he is entitled to a writ

of mandamus. Accordingly, we deny the petition.

**Dated this 19th day of June, 2013.**

**ATTEST:**

**VERONICA J. HANDY, ESQ.**  
**Clerk of the Court**