

Not For Publication

IN THE SUPREME COURT OF THE VIRGIN ISLANDS

**IN RE: KHALIL N. JAFAR a/k/a SAMUEL
GEORGE,**
Petitioner.

S. Ct. Civ. No. 2017-0079
Re: Super. Ct. Civ. No. 561/2011 (STT)

On Petition for Writ of Mandamus

Superior Court Judge: Renée Gumbs-Carty,
Considered and Filed: June 18, 2018

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

APPEARANCE:

Khalil N. Jafar a/k/a Samuel George
St. Croix, U.S.V.I.
Pro se.

ORDER OF THE COURT

PER CURIAM.

THIS MATTER is before the Court on a petition for a writ of mandamus filed by Khalil N. Jafar a/k/a Samuel George. ¹ Jafar requests that this Court hold the Bureau of Corrections - the Respondent in the underlying action *In re Khalil Nabih Jafar a/k/a Samuel George*, Super. Ct. Civ. No. 561/2011 (STT) - in Summary Criminal Contempt of Court, pursuant to V.I.SUPER.CT.R. 138

¹ The Court first notes that this petition is prepared in the Times New Roman-9 font. This is substantially smaller than the required 14-point type. *See* V.I.R.APP.P. 15(a). While the Court accepted this petition because Jafar is incarcerated and in the interest of judicial economy, Jafar is advised that any future filings that does not appear in 14-point font may be rejected.

and 14 V.I.C. § 581(3), due to its failure to comply with the Superior Court's September 25, 2012 Order requiring a response to his petition for a writ of habeas corpus by November 20, 2012.²

“[A] writ of mandamus is a drastic remedy which should be granted only in extraordinary circumstances. To obtain a writ of mandamus, [Jafar] must establish that his right to the writ is clear and indisputable and that he has no other adequate means to attain the desired relief.” *In re Elliot* 554 V.I. 423, 428 (V.I. 2010). “A party possesses a ‘clear and indisputable’ right when the relief sought constitutes a ‘specific ministerial act, devoid of the exercise of judgment or discretion.’” *Id.* at 429 (other citation omitted). “Furthermore ‘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

² See *Pet. at 1* [“Petitioner in matter of filing [this] Mandamus herein, and on the premises of Summary contempt according to and in pursuant to V.I.SUPER.CT.R. 138 and 14 V.I.C. 581(3). (brackets in original);” See also, *Pet. at .2.* (“Respondent was ordered by the court to respond by November 20, 2012 and have not adhere (sic) to said order. Therefore . . . this Honorable Supreme Court have (sic) the authority under Statutory Provisional Action For Summary contempt, to impose summary contempt sanctions authorized by V.I.SUPER.CT.R. 138 and 14 V.I.C. 581(3) because the contempt involved disobedience of a lawful writ.”) See also, *Pet. at 3.* (“Wherefore, in the best interest of justice, Petitioner respectfully request [sic] and pray [sic] that this Honorable Supreme Court grant this petition for A Writ Of Mandamus, and in effect, enforce summary contempt sanctions authorized by V.I.SUPER.CT.R. 138[.]”)

The Court finds that the Bureau of Corrections is the only Respondent based on the foregoing statements and because: 1) Jafar does not direct any requests toward the Superior Court judge and 2) because he has only served this petition upon the Bureau of Corrections. See V.I.R.APP.P. 13(a). (“Application for a writ of mandamus . . . directed to a judge or judges of the Superior Court shall be made by filing a petition therefor with the Clerk of the Supreme Court with proof of service on the respondent judge, on all parties to the action in the Superior Court, and on the Clerk of the Superior Court. . . . If directed to a non-judge, the petition need only be served on the non-judge.”) Thus, even though Jafar is *pro se* and makes general statements about the length of time that his case has been pending as well as general citations to his constitutional rights, the Court cannot expansively construe this petition as one to direct that the Superior Court take any action, especially since nothing prevents him from filing a separate petition that fully complies with the Virgin Islands Rules of Appellate Procedure.

appropriate under the circumstances.” Id at 428 (other citations omitted). Because Jafar meets neither of the prerequisites, the Court will deny this petition.

First, Jafar has not shown that he is indisputably entitled to an order sanctioning Bureau of Corrections either pursuant to 14 V.I.C. § 581(3) or V.I.SUPER.CT.R. 138 because these are not ministerial actions. In fact, imposing contempt *requires* the court’s judgment and discretion.³ See 14 V.I.C. § 581 (“Every court of the Virgin Islands shall have the power to punish by fine or imprisonment **at its discretion**, such contempt of its authority ...” (emphasis added)) V.I.SUPER.CT.R. 138 (“A criminal contempt **may** be punished summarily” (emphasis added).) Moreover, Jafar does not show that he has no alternative means to obtain this relief because he does not allege – and the Superior Court’s certified list of docket entries sheet does not show – that he requested this relief from the Superior Court. See, e.g., *In re Sarauw* S. Ct. Civ. No. 2017-0049, 2017 WL 2257712 at *1 (V.I. May 17, 2017) (“When a higher court and a lower court both possess concurrent jurisdiction over [requested relief], then the availability of [that] relief should first be made in the ~~in the~~ former court unless a good and sufficient reason is given for applying in the first instance to the court of last resource.”)⁴ Accordingly, the premises considered it is hereby

ORDERED that this Petition for a Writ of Mandamus to Enforce Summary Contempt Sanctions against the Bureau of Corrections is **DENIED**; and it is further

ORDERED that copies of this Order shall be distributed to the parties.

³ Moreover, even if imposing contempt was not discretionary, the certified list of docket entries shows that the BOC filed a motion to dismiss on November 20, 2012, which can be deemed to be a response to Jafar’s petition for a writ of habeas corpus.

⁴ This cannot be construed as a finding that Jafar is entitled to his requested relief.

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SO ORDERED this 18th day June, 2018.

ATTEST:

VERONICA J. HANDY, ESQ.
Clerk of the Court