FOR PUBLICATION

IN THE SUPREME COURT OF THE VIRGIN ISLANDS

IN RE:	)	**S. Ct. Civ. No. 2019-0094**
	)	
ELISTON F. GEORGE,	)	
Petitioner.	)	
	)	

On Petition for Writ of Mandamus

Considered: July 14, 2020
Filed: September 11, 2020

Cite as: 2020 VI 19

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

APPEARANCES:

Eliston F. George,
Pro se

Paul L. Gimenez, Esq.
St. Thomas, U.S.V.I.
Attorney for Respondent.

OPINION OF THE COURT

SWAN, Associate Justice.

¶1 Before the Court are Eliston F. George's ("George") December 12, 2019 *pro se* petition for "Writ of Mandamus and/or Writ of Prohibition," the February 5, 2020 "Motion to Deny Petition for Writ of Mandamus" filed by the Clerk of the Superior Court ("Nominal Respondent"), and George's February 25, 2020 response thereto. Paul L. Gimenez, Esq. represents the "Nominal Respondent." Although we deem George's November 25, 2019 petition for writ of habeas corpus to have been filed with the Superior Court on January 30, 2019 by delivery evidenced in a certified mail delivery receipt, we deny his petition for writ of mandamus for the reasons elucidated below.

I. FACTUAL BACKGROUND

¶2 George was convicted in the District Court of the Virgin Islands of first-degree murder and possession of a deadly weapon on September 8, 1978.[1] He was sentenced to life in prison without parole and is in custody at Keen Mountain Correctional Center in Oakwood, Virginia. George's history of direct appeals, which includes at least seven prior habeas corpus petitions, is recounted in this Court's prior opinion, *George v. Wilson* ("*George I*"), 59 V.I. 984, 986-88 (V.I. 2013).

¶3 On December 12, 2019, George filed a petition for a writ of mandamus with this Court, alleging that he mailed another petition for a writ of habeas corpus to the Superior Court of the Virgin Islands, P.O. Box 70, St. Thomas, U.S.V.I. 00804, via certified mail, return receipt requested; that he received confirmation from the post office, via his certified return receipt; and that the Superior Court received his habeas petition on January 30, 2019. George further alleges that more than 10 months have passed since he received noticed that his petition for writ of habeas corpus was delivered to the Superior Court and that the Superior Court Clerk purportedly failed to docket his petition for writ of habeas corpus, assign it a case number, or assign it to a Superior Court judge for a ruling.

¶4 On January 9, 2020, this Court ordered the Clerk of the Superior Court to file an answer to George's petition for a writ of mandamus.

¶5 In response to this Court's January 9, 2020 order, the Nominal Respondent filed a motion to deny George's petition for a writ of mandamus on February 6, 2020. In its response, the

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[1] It is important to note that at the time of George's conviction, the District Court of the Virgin Islands served as a local, or terminal court when hearing cases based on local law. *See Parrot v. Gov't of the V.I.*,230 F.3d 615, 619-20 (3d Cir. 2000). The Virgin Islands Code was amended so as to grant original jurisdiction over all local civil matters to the Virgin Islands Territorial Court, now named the Superior Court, on October 1, 1991. *Id.*

Nominal Respondent informs this Court that the Office of the Clerk of the Court "has no record of a habeas filing by [George] having been received by the office of the Clerk of the Superior Court." (Nominal Resp. at 2.)

¶6 George opposes the Nominal Respondent's motion to dismiss his habeas corpus petition. To his opposition, he attaches a copy of the original petition for writ of habeas corpus and a copy of the return receipt he received from the U.S. Postal Service indicating delivery of the document to the Superior Court. He concludes by urging this Court to grant him a writ of mandamus directing the Superior Court to grant him a hearing on his petition for a writ of habeas corpus.

II. DISCUSSION

A. Jurisdiction and Standard of Review

¶7 Title 4, section 32(b) of the Virgin Islands Code gives this Court jurisdiction over original proceedings for mandamus. The writ of mandamus is a drastic remedy that is seldom issued and its use is discouraged. *See Kerr v. U.S. Dist. Court*, 426 U.S. 394, 402 (1976); *Lusardi v. Lechner*, 855 F.2d 1062, 1069 (3d Cir. 1988). Traditionally, the writ has been used "to confine an inferior court to a lawful exercise of its prescribed jurisdiction or to compel it to exercise its authority when it is its duty to do so." *In re Le Blanc*, 49 V.I. 508, 516 (V.I. 2008) (quoting *Roche v. Evaporated Milk Ass'n.*, 319 U.S. 21, 26 (1943); *see also In re Patenaude*, 210 F.3d 135, 140 (3d Cir. 2000)). Accordingly, a writ of mandamus should be granted only in extraordinary circumstances. *Id.*

¶8 To demonstrate that mandamus is appropriate, "a petitioner must establish that he has no other adequate means to attain the desired relief and that his right to issuance of the writ is clear and indisputable. *In re Le Blanc*, 49 V.I. at 517; *In re Fleming*, 56 V.I. 460, 464 (V.I. 2012); *see also Hahnemann Univ. Hosp. v. Edgar*, 74 F.3d 456, 461-62 (3d Cir. 1996) (noting that formal exhaustion of futile remedies is not required). Moreover, "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 Le Blanc*, 49 V.I. at 517 (quoting *Cheney v. U.S. Dist. Court*, 542 U.S. 367, 380-81 (2004)).

B. George Has a Clear and Indisputable Right to a Ruling

¶9 In the motion to deny the writ of mandamus, the Nominal Respondent contends that George "failed to show that he has a clear and indisputable right to the relief requested, that he had no adequate means of receiving the relief requested or that mandamus is appropriate." (Nominal Resp. at 3.) To bolster her argument, the Nominal Respondent further contends that George did not request that the Superior Court "accept his alleged [p]etition for habeas corpus for filing or that it be processed by the Superior Court" or that the allegation that the Superior Court received a complete copy of his petition for writ of habeas corpus via certified mail at P.O. Box 70, St. Thomas, U.S.V.I. 00804 is unsupported and—even if true—would not comply with Rule 2, V.I.H.C.R. and Rule 2(a)(7), V.I.H.C.R. (Nominal Resp. at 3-4.) The Nominal Respondent also informs this Court that, based on discussions with the Virgin Islands Solicitor General's Office,

> It appears that [George] forwarded a copy of the alleged [p]etition to that [o]ffice but after doing contemporaneous checks with the Office of the Clerk, the Assistant Solicitor General assigned to the case determined that [George] had never filed the Petition in the Superior Court and subsequently closed their file in March 2019.

(Nominal Resp. at 4.) For these reasons, including his argument that George made no payment of the docketing fee or a request to proceed in *forma pauperis* as required by Rule 2(a)(8) V.I.H.C.R., the Nominal Respondent argues that the Superior Court cannot hear the matter and accordingly George's petition for writ of mandamus should be denied.

¶10 In his response, George argues that he mailed a copy of his petition for writ of habeas corpus to the Clerk of the Superior Court, Superior Court of the Virgin Islands, P.O. Box 70, St.

Thomas, U.S. Virgin Islands, 00804, on January 20, 2019. A review of the record reveals that Adrian Francis, the messenger for the Superior Court ("Francis"), signed the return receipt on January 30, 2019 indicating receipt of George's mail by the Superior Court. Therefore, his petition for a writ of habeas corpus will be deemed to have been filed with the Superior Court on January 30, 2019.

¶11 To address the question of whether George had a clear legal right to a writ of mandamus, we must first set forth the applicable law. Virgin Islands Habeas Corpus Rule 2 states that "[a]ny person who believes he or she is unlawfully imprisoned or detained in custody, confined under unlawful conditions, or otherwise unlawfully restrained of his or her liberty, may file a petition for writ of habeas corpus to seek review of the legality of that imprisonment or detention."[2] *See also* 5 V.I.C. § 1301 ("[E]very person that is unlawfully imprisoned or restrained of his liberty, under any pretense whatever, may prosecute a writ of habeas corpus, to inquire into the cause of such imprisonment or restraint."). Because George was convicted and sentenced under Virgin Islands law, the Virgin Islands Superior Court has jurisdiction over his petition for writ of habeas corpus, which is his initial filing that would commence the proceeding in this case. V.I. H.C.R. 1; *see also Walker v. V.I.*, 220 F.3d 82, 86 (3d Cir. 2000).

¶12 A petitioner "possesses a 'clear and indisputable' right when the relief sought constitutes a specific ministerial act, devoid of the exercise of judgment or discretion." *In re Fleming*, 56 V.I. at 464 (quoting *In re People of the V.I.*, 51 V.I. 374, 387 (V.I. 2009)); *see also Dunn-McCampbell Royalty Interest, Inc. v. Nat'l Park Serv.*, 112 F.3d 1283, 1288 (5th Cir. 1997). A ministerial [act or] duty is an act that is required by law to be performed without the exercise of discretion or

[2] The Virgin Islands Habeas Corpus rules, including Rule 2, were adopted on December 1, 2017.

judgment. *See In re Elliot*, 54 V.I. 423, 429 (V.I. 2010); *In re People of the V.I.*, 51 V.I. at 387. The Virgin Islands Rules of Civil Procedure provide that "a paper is filed by delivering it to the clerk [of the Superior Court]" who "must not refuse to file a paper solely because it is not in the form prescribed by these rules or local practice." V.I. R. Civ. PRO. 5(2)(A)(4).

¶13 George's allegation that the Superior Court received his habeas corpus petition is supported by evidence in the record of a U.S. Postal Service return receipt signed by Francis, the Superior Court's messenger, on January 30, 2019. Notwithstanding the presence of an affidavit in the record by Tamara Charles, Clerk of the Superior Court, averring that the Superior Court never received George's petition, the Nominal Respondent has stated in the present briefing that the court learned from the Department of Justice that the Department had received a copy of George's habeas petition. Because appropriate personnel at the Superior Court received the habeas corpus petition and because the recipient was an agent of the Superior Court who was authorized to collect the mail, these facts constituted a proper filing of the petition in the Superior Court. *See Artuz v. Bennett*, 531 U.S. 4, 8 (2000) ("[A]n application is filed as that term is commonly understood, when it is delivered to, and accepted by, the appropriate court officer for placement into the official record."); *see also United States v. Lombardo*, 241 U.S. 73, 76 (1916) (noting "a paper is filed when it is delivered to the proper official and by him received and filed"). The fact that Francis may have been negligent in delivering George's petition for a writ of habeas corpus should not adversely affect George. And, the failure of the Superior Court clerk to process the case in a timely manner, after learning of the facts surrounding the circumstances, rises to the level of a breach of a ministerial duty.

C. George Lacks Other Adequate Means to Obtain the Desired Relief

¶14 It is well established that "[w]here there are practical avenues for seeking relief that are untried, this Court will ordinarily deny a petition for mandamus." *In re Le Blanc*, 49 V.I. at 517 (quoting *In re Patenaude*, 210 F.3d at 141); *see also In re Baby E.C.*, 69 V.I. 826, 835 (V.I. 2018); *In re Fleming*, 56 V.I. at 466. Thus, mandamus is not ordinarily granted where the party aggrieved has another adequate and unexhausted remedy such as, by appeal, by habeas corpus, by motion to vacate, set aside or correct sentence, by administrative procedure or by judicial review of an administration decision. *See Heckler v. Ringer*, 466 U.S. 602, 616 (1984) (noting the well-established principle that mandamus "is intended to provide a remedy for plaintiff only if he has exhausted all other avenues of relief"); *United States v. W. Indies Transp. Co.*, 35 F.Supp.2d 450, 457 (D.V.I. 1998) (same); *Bryan v. Fawkes*, 62 V.I. 19, 32 (V.I. Super. 2014) ("Ordinarily, the availability of other adequate remedies is fatal to a petition for writ of mandamus.").

¶15 Because George was charged and convicted under Virgin Islands law, he has no means other than to file a petition for writ of habeas corpus with the Virgin Islands Superior Court to obtain relief against actual restraint upon his liberty. The Superior Court Clerk has a ministerial duty to accept applications for habeas corpus relief filed with the court. *See Delcon v. District Clerk*, 187 S.W. 3d 473 (Tex. Crim. App. 2006 (per curiam). And, if the Superior Court fails to accept George's petition he has no other adequate remedy to pursue his grievances. When a mandamus petition alleges that a Superior Court clerk has failed to docket a petitioner's filing, assign it a case number, or assign it to a Superior Court judge for a ruling "the breach of ministerial duty . . . is one that, by its very nature, this Court cannot adequately review on direct appeal." *In re Gov't of the V.I.*, S. Ct. Civ. No. 2011-0029, 2011 WL 1983415, at *3 (V.I. May 18, 2011)

(citing *In re Elliot*, 54 V.I. at 425). Mandamus thus lies to compel the Clerk of the Superior Court to accept George's petition for a writ of habeas corpus.

D. Granting George's Petition for Writ of Mandamus is Not Appropriate in This Case

¶16 Although George has met his burden of showing that there is no other means to obtain the desired relief and that his right to that relief is clear and indisputable, the decision to issue a writ of mandamus ultimately lies within the discretion of this Court. "To determine whether a writ of mandamus is appropriate under the circumstances, we consider factors including, but not limited to, the public interest, the importance or unimportance of the question presented, and equity and justice." *In re Fleming*, 56 V.I. at 469 (quoting *In re People*, 51 V.I. at 393 (collecting cases)). Additionally, the "court considers whether judicial economy and sound judicial administration militate for or against issuing the writ." *Savage v. Third Judicial Dist. Court ex. rel. County of Lyon*, 200 P.3d 77, 81 (Nev. 2009); *see also Linde v. Arab Bank, PLC*, 706 F.3d 92, 108 (2d Cir. 2013) (noting that factors such as "a novel and significant question of law and whether it includes the presence of a legal question whose resolution will aid in the administration of justice" are considered) (alterations omitted).

¶17 Mandamus relief is not appropriate in this case. A thorough review of the record reveals that the gravamen of George's petition for writ of habeas corpus is encapsulated in his extremely vague argument that his petition for a writ of habeas corpus "is based on physical and touchable, certified record evidence clearly indicating that the trial judge was keenly aware of exculpatory statements involved in petitioner's case and trial counsel failed to take appropriate action which resulted in a violation of *Martinez v. Ryan*, 132 U.S. 1309, 1319 (2012)" and that he was never provided with a complete copy of his trial transcript in its entirety, nor was he provided with other

relevant legal documents to allow him to properly marshal the facts necessary to state his claim meritoriously. (Petitioner at 2.) Although George "need not argue or cite law" in his petition for writ of habeas corpus, he must "set forth separately each ground on which the imprisonment or detention is alleged to be illegal, and shall state the specific facts supporting each ground." *In re Adoption of Virgin Islands Habeas Corpus Rules*, No. 2017-008, 2017 WL 7512818, at *4 (V.I. Aug. 18, 2017). George fails to separate each ground on which he alleges his imprisonment is illegal and states no specific facts to support any claims in his petition for writ of habeas corpus.

¶18 Equally important, without providing specific facts or any support for his claim, George's argument that the trial judge was keenly aware of exculpatory statements in his case, that his attorney failed to take appropriate action which violated *Martinez v. Ryan*, 132 U.S. 1309, 1319 (2012), and that he was neither provided with a complete copy of his trial transcript in its entirety nor provided with other relevant legal documents to allow him to properly marshal the facts necessary to state his claim meritoriously, are all encompassed and addressed under his previously litigated claim of ineffective assistance of counsel in this jurisdiction. When a petition for a writ of habeas corpus "merely repackages [and recycles] the same arguments that a court has already reviewed on direct appeal or in a previous writ, it is procedurally barred." *Rodriguez v. Bureau of Corrections*, 70 V.I. 924, 930 (V.I. 2019); *see also Rodriguez v. Bureau of Corrections*, 58 V.I. 367, 376-77 (V.I. 2013) (observing that it is "settled legal precedent" that a habeas corpus petition cannot be used to relitigate issues that have already been considered and decided). Additionally, "where a petitioner properly raised an issue on direct appeal to this Court, and this Court rejected it on the merits, the petitioner is procedurally barred from re-litigating that issue through a habeas petition." *Blyden v. Gov't of the V.I.*, 64 V.I. 367, 378 (V.I. 2016). Moreover, the doctrine of res judicata in this jurisdiction has historically precluded litigants from relitigating a claim in which

"the prior judgment was valid, final, and on the merits," among other factors. *See Stewart v. Virgin Islands Board of Land Use*, 66 V.I. 522, 532 (V.I. 2017) (collecting cases). To overcome the bar in seeking a writ of habeas corpus, George's petition must show that a "fundamental miscarriage of justice would result from a failure to entertain the claim." *George I*, 59 V.I. at 990 (quoting *Wise v. Fulcomer*, 958 F.2d 30, 34 (3d Cir. 1992)). The present petition has utterly failed to support a claim of fundamental miscarriage of justice. Moreover, granting George's request for a writ of mandamus and returning this case to the Superior Court for relitigation of the same issues we already exhaustively decided in his 2013 case, *George I*, 59 V.I. at 990, would tremendously and unnecessarily overburden the judicial system, further militating against judicial economy and administration.

III. CONCLUSION

¶19 Accordingly because we find that mandamus is not appropriate under the circumstances, we exercise our discretion and deny George's petition for a writ of mandamus. *In re Morton*, 56 V.I. 313, 319 (V.I. 2012).

DATED this 11th day of September 2020.

/s/ Ive Arlington Swan
IVE ARLINGTON SWAN
Associate Justice

ATTEST

VERONICA J. HANDY, ESQ.
Clerk of the Court

By: **/s/ Natasha Illis**
Deputy Clerk

Dated: **September 11, 2020**