

Not For Publication

IN THE SUPREME COURT OF THE VIRGIN ISLANDS

IN RE: JAMAL MORTON,) **S. Ct. Civ. No. 2014-0070**
Petitioner.) Re: Super. Ct. Crim. No. 164/2010 (STT)
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)
_____)

On Petition for Writ of Mandamus
Superior Court Judge: Hon. Kathleen Y. Mackay

Considered and Filed: December 4, 2014

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

APPEARANCES:

Joseph A. DiRuzzo III, Esq.
Fuerst Ittleman David & Joseph, PL
Miami, FL
Attorney for Petitioner.

OPINION OF THE COURT

PER CURIAM.

This matter comes before the Court pursuant to a petition for writ of mandamus filed by Jamal Morton. In his petition, Morton requests that this Court direct the Superior Court judge presiding over the underlying matter to issue a merits ruling on a “Motion For A Determination Regarding Preserving Error During Jury Selection” in *People of the V.I. v. Morton*, Super. Ct. Crim. No. 164/2010 (STT). For the reasons that follow, we deny the petition.

I. BACKGROUND

On March 26, 2010, the People of the Virgin Islands charged Morton with numerous offenses, including first-degree murder. Morton, through his counsel, filed a June 4, 2014 motion requesting that the Superior Court determine the applicable rule governing preservation

of error during the jury selection process. According to Morton, such a ruling was necessary because federal and state courts are split as to the appropriate standard and he wished to ensure that any error in the jury selection process is properly preserved.

The Superior Court, in a September 26, 2014 order, denied the motion. While the Superior Court found that the standard for preserving an error with the jury selection process was unclear, it concluded that Morton's motion was premature because a trial was not yet imminent, and that even if the matter did proceed to trial there was no guarantee that Morton would move to strike a juror or that such a motion would be denied. Thus the Superior Court concluded that the motion was premature, and that issuing a merits ruling at that time would not further the interests of judicial economy.

Shortly thereafter, Morton filed his petition for writ of mandamus with this Court. In his petition, Morton asserts that the Superior Court abdicated a ministerial duty to rule on a motion properly before it, and that he possesses no other means, short of mandamus, to compel the Superior Court to issue a merits ruling.

II. DISCUSSION

This Court possesses jurisdiction over original proceedings for extraordinary writs, including 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 Rogers*, S. Ct. Civ. No. 2014-0024, 2014 V.I. Supreme LEXIS 31, at *6 (V.I. May 27, 2014) (unpublished) (quoting *In re People of the V.I.*, 51 V.I. 374, 382 (V.I. 2009)). But “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 V.I. Supreme LEXIS 14, at *8

(V.I. Apr. 5, 2013) (unpublished) (quoting *Cheney v. U.S. Dist. Court*, 542 U.S. 367, 380-81 (2004)).

We conclude that Morton has failed to meet this high burden. While Morton frames his claim as the Superior Court failing to rule on his motion, the Superior Court did, in fact, issue an order denying the motion as premature. This Court has repeatedly held that the mere fact that a motion is filed does not compel a ruling on the merits of the issue or issues presented therein; in fact, this Court has, on occasion, reversed the Superior Court for issuing a premature merits ruling on a motion. *See, e.g., V.I. Gov't Hosps. & Health Facilities Corp. v. Gov't of the V.I.*, 50 V.I. 276, 280-81 (V.I. 2008) (error to rule on merits of attorney's fees motion when underlying judgment is on appeal). Moreover, this Court has already held that the Superior Court may exercise its discretion to defer a merits ruling on a motion if the interests of judicial economy would be furthered by considering the issue at a later date. *In re Royer*, S. Ct. Civ. No. 2014-0023, 2014 V.I. Supreme LEXIS 34, at *5 (V.I. June 30, 2014) (unpublished). As such, Morton's right to a merits ruling is not clear and indisputable.

For similar reasons, it is clear that Morton possesses an adequate alternate means to obtaining a merits ruling. In its September 26, 2014 order, the Superior Court did not state that it would never rule on the issue raised in Morton's motion; rather, it indicated that the motion was premature, and implied that it would consider the issue if the case proceeded to trial and an actual dispute between the parties occurred during jury selection. While we question the value of such a ruling given that the Superior Court lacks the authority to establish standards for error preservation on appeal to this Court, *see Tindell v. People*, 56 V.I. 138, 150 n.12 (V.I. 2012), it is clear that the Superior Court is amenable to issuing a merits ruling in the event a jury selection issue arises during trial. *See In re Le Blanc*, 49 V.I. 508, 517 (V.I. 2008) (“[W]here there are

practical avenues for seeking relief that are untried, this Court will ordinarily deny a petition for mandamus.”) (internal quotation marks and citation omitted).

III. CONCLUSION

For the foregoing reasons, we deny the petition for writ of mandamus.

Dated this 4th day of December, 2014.

ATTEST:
VERONICA J. HANDY, ESQ.
Clerk of the Court