

**Not For Publication**

**IN THE SUPREME COURT OF THE VIRGIN ISLANDS**

**IN RE: RODNEY E. MILLER, SR.,**

Petitioner.

)  
) **S. Ct. Civ. No. 2008-074**

)  
) Re: Super. Ct. ML No. 003/2008

---

On Petition for Writ of Mandamus  
Considered and Filed: September 26, 2008

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

**ATTORNEYS:**

**William Glore, Esq.**  
Dudley, Clark & Chan  
St. Thomas, U.S.V.I.  
*Attorney for Petitioner*

**Denise George-Counts, Esq.**  
Assistant Attorney General  
St. Thomas, U.S.V.I.  
*Attorney for Respondent Government of the Virgin Islands*

**MEMORANDUM OPINION AND ORDER OF THE COURT**

**PER CURIAM.**

**THIS MATTER** is before the Court on Rodney E. Miller, Sr.’s (hereafter “Petitioner”) Petition for Appellate Stay and For Writ of Mandamus filed with this Court on September 18, 2008. In an Order entered on September 24, 2008, we denied Petitioner’s request for an appellate stay on the dual grounds that Petitioner failed to comply with Supreme Court Rule 8(b) and that the trial judge had granted Petitioner a continuance of the contempt proceedings.

Having already addressed the stay portion of the petition, we will discuss herein only Petitioner's request for a writ of mandamus and the facts relating thereto. Pursuant to title 4, section 32(b) of the Virgin Islands Code, this Court has jurisdiction over original proceedings for mandamus. According to Supreme Court Rule 13(b), the panel of the Court may immediately deny the petition for writ of mandamus or it may order a response from the respondent. Thereafter, "[t]he Clerk shall advise the parties of the dates on which briefs, if required, are to be filed and of the date, if any, of oral argument." V.I.S.C.T.R. 13(b). In this case, the Government of the Virgin Islands filed its opposition to the petition for a writ of mandamus on September 22, 2008. Because we will dismiss this petition as moot, the parties will not be required to file briefs nor to participate in oral arguments regarding the merits of the petition.

## **I. BACKGROUND**

This Petition for Writ of Mandamus stems from an August 5, 2008 *ex parte* Temporary Restraining Order ("TRO") entered by the Superior Court, pursuant to title 14, section 606(h)<sup>1</sup> of the Virgin Islands Code. The TRO restrained activity on several enumerated stateside and Virgin Islands bank accounts and real properties owned by Petitioner, among others. Subsequent to its issuance, the TRO and the affidavit on which it was based were placed under seal. On August 22, 2008, a hearing was held on the TRO at which Petitioner appeared and filed a motion to vacate. At the close of the hearing, the trial judge ordered the parties to submit additional memoranda by August 29, 2008. All parties timely filed their memoranda and responses.

Twenty days later, on September 18, 2008, Petitioner filed his petition for writ of mandamus with this Court, seeking an order from this Court compelling the trial judge to issue a decision on the motion to vacate the TRO on the grounds that the trial judge had refused to rule

---

<sup>1</sup> Title 14, section 606(h) of the Virgin Islands Code is a provision of the Criminally Influenced and Corrupt Organizations Act.

upon Petitioner's motion to vacate, thereby depriving him of appellate review. On September 23, 2008, the trial judge issued its Memorandum Opinion and Order, denying Petitioner's motion to vacate.

## II. DISCUSSION

A writ of mandamus is a drastic remedy which should be granted only in extraordinary circumstances. *In re: Le Blanc*, Civ. No. 2007-079, 2008 WL 2625225, at \*3 (V.I. June 26, 2008); *Allied Chem. Corp. v. Daiflon, Inc.*, 449 U.S. 33, 34, 101 S.Ct. 188, 190, 66 L.E.2d 193 (1980). A petitioner must establish that he has no other adequate means to attain the relief requested and that his right to the writ is clear and indisputable. *In re: Le Blanc*, 2008 WL 2625225, at \*3; *Allied Chem. Corp.*, 449 U.S. at 34, 101 S.Ct. at 190. Significantly, "[w]hile mandamus is typically characterized as an appellate power . . . it is different in kind from an appeal." *Madden v. Myers*, 102 F.3d 74, 77 (3d Cir. 1996). Therefore, we may not issue a writ of mandamus if Petitioner can obtain the relief sought by bringing an appeal in this Court. *In re Le Blanc*, 2008 WL 2625225, at \*3.

In this case, Petitioner seeks a writ compelling the trial judge to rule upon his motion to vacate the TRO. However, while this petition was pending in this Court, the trial judge issued his ruling on said motion. Accordingly, Petitioner's Petition for the Writ of Mandamus is now moot. To the extent that Petitioner seeks to challenge the merits of the TRO, he may do so only by following the normal appellate process.

## III. CONCLUSION

Because the trial judge has ruled on Petitioner's motion to vacate the *ex parte* TRO, his Petition for Writ of Mandamus to compel such action is moot. Accordingly, it is hereby

**ORDERED** that the Petition for Writ of Mandamus is **DISMISSED** as moot. It is further

**ORDERED** that copies of this Order be served on the parties' counsel.

**SO ORDERED** this 26th day of September, 2008.

**ATTEST:**  
**GLENDALAKE, ESQ.**  
**Acting Clerk of the Court**