

FILED

September 07, 2022 12:41 PM

SCT-CIV-2020-0097
VERONICA HANDY, ESQUIRE
CLERK OF THE COURT

For Publication

IN THE SUPREME COURT OF THE VIRGIN ISLANDS

JEFFREY HOWERTON,	)	S. Ct. Civ. No. 2020-0097
Appellant/Petitioner,	)	Re: ST-2020-MC-00015 (STT)
	)	
v.	)	
	)	
V.I. OFFICE OF THE LIEUTENANT	)	
GOVERNOR, DIVISION OF BANKING,	)	
INSURANCE, AND FINANCIAL	)	
REGULATION; V.I. POLICE DEPARTMENT;	)	
JOHN/JANE DOES 1-100, ET AL.	)	
Appellees/Respondents.	)	

On Appeal from the Superior Court of the Virgin Islands
Division of St. Thomas-St. John
Superior Court Judge: Hon. Harold W.L. Willocks

Filed: September 7, 2022
Considered: May 10, 2022

Cite as: 2022 VI 19

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

APPEARANCES:

Jeffrey Howerton
Pro Se
Appellant,

Michael R. Francisco, Esq.
Assistant Attorney General
St. Thomas, U.S.V.I.
Attorney for Appellee.

OPINION OF THE COURT

SWAN, Associate Justice.

I. FACTS AND PROCEDURAL HISTORY

¶1 On March 20, 2020, *pro se* Appellant Jeffrey Howerton (“Appellant”) filed a petition for writ of mandamus in the Superior Court of the Virgin Islands. (S.A. 01). In his petition, Appellant targets three financial institutions, alleging a plethora of complaints and ultimately calling for an investigation of the financial institutions; namely, Banco Popular, Scotia Bank, and Trident Trust (correctly known as Trident Trust Company Virgin Islands). (S.A. 02-03). In his petition, Appellant asserts a myriad of grievances alleging, *inter alia*, that his complaints and communications with the financial institutions have gone unanswered and were inappropriately addressed. (S.A. 02). Appellant begins his catalog of grievances by stating that he sent a complaint form targeting Trident Trust Company Virgin Islands to employees of the Office of the Lieutenant Governor, namely, Gwendolyn Brady and Glendina Matthew. (S.A. 02). Appellant further contends that upon contacting the employees, he determined that his communication was read; however, he received no response. (S.A. 02). Appellant then proceeded to send a complaint form regarding Banco Popular to the Office of the Lieutenant Governor. (S.A. 02).

¶2 Following his Banco Popular submission, Appellant was contacted via telephone by Shanda Albert (“Albert”) who identified herself as an employee of the Lieutenant Governor’s Office, Division of Banking, Insurance, and Financial Regulation. (S.A. 02). Upon receiving a response by means of telephone from Albert, Appellant sent additional messages to the Office of the Lieutenant Governor through the “Contact Us” section provided by the online services portal, to request that all communication be conducted through email. (S.A. 02). Albert then reached out to the Appellant through email, informing him that she was contacting the Appellant regarding his banking complaint. (S.A. 27). In her emailed response, Albert informed the Appellant that she had made several unsuccessful attempts to contact him via telephone. (S.A. 27). Upon receiving an initial emailed reply from Appellant, Albert suggested that Appellant physically come into the

Lieutenant Governor's Office located on St. Thomas to address his submissions and complaints.

(S.A. 27). Despite her address and further confirmation of the Appellant's reference number to his complaint, Appellant stated he believed the communication to be "hijacked and fraudulent."

(S.A. 02). Subsequent to his email interaction with Albert and Appellant's conclusion that the communications were not authentic, Appellant forwarded his complaints to the National Association of Insurance Commissioners (NAIC) through their online database. (S.A. 03). Upon that organization's lack of response to his complaints, Appellant considered it "compromised" as well. (S.A. 03). Afterwards, Appellant decided to submit by email a Professional Standards complaint to Chenelle Skepple of the V.I. Police Department. Again, Appellant claimed that the response he received was compromised. (S.A. 03). Appellant asserts that he also submitted his concerns to the Office of the Virgin Islands Inspector General; however, he claims he was again met with silence. (S.A. 03). Appellant attributes the lack of response and lack of assistance by the government agencies to a number of his relatives in his home state of California, as well as national luminaries, whom he claims have an ongoing conspiracy to "target and torture" Appellant. (*See generally* S.A. 01). Specifically, as detailed in his petition, Appellant asserts that for decades he has been a target and victim of assault and stalking by the Federal Bureau of Investigation and their informants, including involuntary body modification during which technology was implanted in his skull, and that he was also a victim of other atrocities including hate crimes, domestic abuse, and torture. (S.A. 01). Appellant further contends that these acts occurred in California and other states outside of the U.S. Virgin Islands. (S.A. 04).

¶3 Following the plethora of Appellant's complaints filed with the aforementioned agencies and private business institutions, Appellant filed his petition for writ of mandamus in the Superior Court, purportedly to ensure that his claims would be processed. On July 23, 2020, after a thorough

review, the Superior Court ultimately denied Appellant's petition for a writ of mandamus. In its order, the court concluded that Appellant failed to provide any evidentiary support of his claims and, furthermore, he failed to establish that he had a clear and indisputable right of relief as required for the granting of mandamus relief. (S.A. 43).

¶4 On July 30, 2020, the Appellant filed a timely notice of appeal.¹ (S.A. 36). In support of his appeal of the Superior Court's July 23, 2020 order, the Appellant submitted a one paragraph brief in which he requested that this Court review his petition and "view that document as [his] case for why the dismissal from the V.I. Supreme Court should permit the writ of mandate [sic]..." (S.A. 104). For the following reasons, we affirm the Superior Court's order denying the Appellant's petition for writ of mandamus.

II. JURISDICTION AND STANDARD OF REVIEW

¶5 This Court has jurisdiction over this matter pursuant to title 4, section 32 of the Virgin Islands Code. Under Section 32, this Court is granted jurisdiction over "all appeals arising from final judgments, final decrees or final orders of the Superior Court[.]" V.I. CODE ANN. tit. 4, § 32(a). Since the Superior Court's July 23, 2020 order resolved all claims between the parties, it constitutes a final appealable judgment within the meaning of section 32(a).² *Moorhead v. Mapp*, 62 V.I. 595, 598 (V.I. 2015) (citing *Weary v. Long Reef Condo. Ass'n*, 57 V.I. 163, 165 (V.I. 2012)). "[T]he standard of review for this Court's examination of the Superior Court's application of law is plenary, while findings of fact are reviewed for clear error." *Rawlins v. People*, 58 V.I. 261, 268 (V.I. 2013) (citing *St. Thomas–St. John Bd. of Elections v. Daniel*, 49 V.I. 322, 329 (V.I.

¹ See V.I. R. APP. P. 5(a)(1) ("[T]he notice of appeal required by Rule 4 shall be filed with the Clerk of the Superior Court within thirty days after the date of entry of judgment or order appealed from.").

² See also *V.I. Gov't Hosps. & Health Facilities Corp. v. Gov't of the V.I.*, 50 V.I. 276, 391 (V.I. 2008) ("A final judgment, decision, or order is one that ends the litigation on the merits and leaves nothing to do but execute the judgment.").

2007)). For the reasons that follow, we hold that Appellant has failed to provide any argument and legal support required for relief in this Court, and has also failed to meet the requirements for issuance of a writ of mandamus.

III. DISCUSSION

A. Appellant Failed to Provide a Sufficient Argument or Support for Grounds on Which Relief May Be Granted.

¶6 As a threshold matter, we note that the Appellant failed to provide any legal support for his claim for mandamus relief. Although appellate courts “typically exercise some degree of leniency toward *pro se* litigants who lack formal legal training,”³ we find that Appellant’s petition and subsequent brief on appeal are fatally deficient; therefore, the petition and brief leave this Court with very little leeway and limited options to consider in terms of Appellant’s claims and arguments. On February 12, 2021, Appellant filed “Appellant’s Opening Brief” which consisted of only one paragraph which simply asked this Court to review the same petition he filed with the Superior Court as constituting the sole basis for his argument on appeal. Blatantly obvious in Appellant’s petition was the lack of any legal analysis or support as to why this Court should find in its review that the Superior Court erred when it denied the Appellant petition for a writ of mandamus.

¶7 Regarding the structure and the content of the Appellant’s brief, Rule 22 of the Virgin Islands Rules of Appellate Procedure prescribes the required construction and specifications of

³ *Weary v. Long Reef Condo. Ass’n*, 57 V.I. 163, 167 (V.I. 2012); *Kutska v. California State College*, 564 F.2d 108, 111 (3d Cir. 1977) (elaborating that leniency is given since *pro se* litigants are “typically not conversant with the rules governing appeals.”).

briefs for appeals before this Court. Rule 22(a), governing the brief of the Appellant, provides in part that a brief shall have the following:

“(1) A table of contents, with page references, and a table of cases (alphabetically arranged), statutes, and other authorities cited, with references to the pages of the brief where they are cited... (2) A statement of subject matter and appellate jurisdiction... (3) A statement of the issues presented for review and standard of review... (4) A statement of the case... (5) An argument.... *The argument shall contain the contentions of the appellant with respect to each of the issues presented, and the reasons therefor, with citations to the authorities, statutes, and parts of the record relied on...* (6) A short conclusion stating the precise relief sought.”

V.I. R. APP. P. 22(a) (emphases added).

¶8 It is undeniable that Appellant’s brief has failed to comply with the rules prescribed by this Court as his brief lacks any of the required components. The most notable missing component is a discernable legal argument. In his brief, Appellant completely fails to enumerate any issues or reasons, with proper citations to pertinent legal authorities, upon which this Court may rely to evaluate the merits of his claim for mandamus relief. In other words, Appellant failed to cite to any legal precedent or caselaw, or provide an iota or modicum of foundation for his request for a writ of mandamus. While we read the filings of *pro se* litigants charitably, affording them the benefit of an “extreme[ly] liberal reading,” *Carrillo v. CitiMortgage, Inc.*, 63 V.I. 670, 679 (V.I. 2015), merely offering a regurgitated argument from the petition for a writ of mandamus on appeal is not sufficient grounds for overturning the Superior Court’s ruling that denied the petition. Not only has Appellant failed to offer any basis to reverse the Superior Court’s order in his filed brief, but upon review of his petition, it also fails to warrant mandamus relief. Rule 22(m) provides that “issues that were (1) not raised or objected to before the Superior Court, (2) raised or objected to but not briefed, or (3) are only adverted to in a perfunctory manner or unsupported by argument

and citation to legal authority, are deemed waived for purposes of appeal....” V.I. R. APP. P. 22(m).

Appellant’s lack of briefing and authoritative support of his position leaves his argument waived.

¶9 In reviewing Appellant’s petition, two (2) things become obvious: (1) Appellant failed to raise any properly supported issue for adjudication, and (2) the Appellant failed to establish any meaningful legal ground for relief. Of the 25 pages that comprise the Appellant’s brief, excluding exhibits, only the first three pages outline any relation to activities originating in the Virgin Islands. However, even within those three pages, Appellant fails to establish a nexus between himself and the institutions from which he seeks an unidentified relief. Appellant has failed to provide any evidence that he is a customer of any of the institutions to which he has submitted complaints nor has he provided any evidence of a substantial claim against them. Even within the sparsity of information that Appellant has provided, he still fails to plead a basis for relief for which the Appellees may be responsible. A major part of Appellant’s petition is consumed by a discussion of alleged personal traumas and vendettas caused by individuals and entities that have nothing to do with this Territory. Except for the asserted grievances, within the first few pages of his petition, Appellant expended very little time addressing his interaction with the Appellees, the base connection or cause for his claim, or demonstrating how he is generally entitled to mandamus relief. Even more egregious, neither in his terse brief or in his reoffered petition, has Appellant provided an argument to confirm that any error was made by the Superior Court in its denial of his petition for writ of mandamus. While the appellate briefs filed by *pro se* litigants, like *pro se* pleadings, are “interpreted with considerable lenience because the[ir authors] lack formal legal training,” and as a policy matter, the Court “give[s] *pro se* litigants greater leeway in dealing with matters of procedure and pleading,” *Clarke v. Lopez*, 73 V.I. 512, 516 (2020) (quoting *Marsh-Monsanto v. Clarenbach*, 66 V.I. 366, 376 (V.I. 2017)), that lenience and leeway are not unlimited.

It does not extend so far to “allow a party to ignore or defy the rules of procedural and substantive law.” *Construction Technicians v. Zurich American Ins. Co.*, 61 V.I. 153, 157 n.3 (V.I. 2014) (quoting *Simpson v. Golden*, 56 V.I. 272, 280 (V.I. 2012)). While it permits an appellate court to reach an argument that is raised on appeal but inadequately supported, *Appleton v. Harrigan*, 61 V.I. 262, 267 (V.I. 2014), it does not require the appellate court to “raise new arguments *sua sponte* on behalf of a *pro se* litigant.” *Marsh-Monsanto*, 66 V.I. at 376 (quoting *Fleming v. Cruz*, 62 V.I. 702, 722 (V.I. 2015) (Cabret, J., concurring)). Accordingly, we decline to engage in that exercise on Appellant’s behalf here.

B. Appellant Failed to Show That He is Entitled to Relief by Writ of Mandamus.

¶10 In accordance with Virgin Islands jurisprudence “a writ of mandamus is a drastic remedy which should be granted only in extraordinary circumstances.” *In re Elliot*, 54 V.I. 423, 428 (V.I. 2010) (quoting *In re LeBlanc*, 49 V.I. 508, 516 (V.I. 2008)). In order to obtain a writ, it is essential for a petitioner to establish there is “no other adequate means to attain the desired relief” and furthermore that there is a “clear and indisputable right.” *Id.* However, even if it should be determined that the first two prerequisites have been satisfied, “the issuing court, in the exercise of its discretion, must be satisfied that the writ is appropriate under the circumstances.” *In re Fleming*, 56 V.I. 460, 464 (V.I. 2012) (quoting *Cheney v. U.S. Dist. Court for D. C.*, 542 U.S. 367, 380–81 (2004)). Moreover, “[w]here there are practical avenues for seeking relief that are untried, this Court will ordinarily deny a petition for mandamus.” *Id.* (quoting *In re Patenaude*, 210 F.2d 135, 141 (3d Cir.2000)). For the reasons that follow, we hold that Appellant has utterly failed to meet the requirements for relief under a writ of mandamus.

¶11 Though it is sufficient to affirm the Superior Court’s ruling on the basis of Appellant’s lack of supported legal argument or grounds for relief, for purposes of a full review, we will address

Appellant's short assertion that he is still entitled to relief by a writ of mandamus. Here, Appellant sought a writ of mandamus from the Superior Court to compel Appellees to not only respond to his complaint, but to do so using his requested medium, email. In his keynote and solitary argument on appeal, the Appellant contends that his petition for writ of mandamus is appropriate and that the Superior Court erred in its denial because he has no other adequate means to obtain relief. In his petition, Appellant recounts his complaints lodged with financial institutions Banco Popular, Scotia Bank, and Trident Trust Company Virgin Islands, as well as his interaction with the Appellees and their representative as he sought to have his complaints addressed in his preferred medium. However, as the Appellant was ensuring that he clarified and organized his many communications, both submitted and received, he also made it clear that he had not exhausted all means to obtain relief.

¶12 The most conspicuous pieces of evidence to highlight this point are the multiple telephone calls the Appellant stated he received after submitting his complaints and the emailed interaction between the Appellant and an employee for Appellee, Shanda Albert. Here, we are made well aware that the Appellant did not exhaust all means of relief as he was given (1) the option to resolve his issues by telephone and (2) the option to visit Appellee's office to resolve his complaints in person which Appellant failed to do. The law is undisputed. When assessing whether relief is appropriate for a writ of mandamus, the law does not revolve around what the Appellant finds suitable in terms of relief. The law is well established that there must be no other adequate means to obtain the desired relief. Here, Appellant did not have just one, but two other adequate forms of relief, one of which offered the Appellant the opportunity to handle any and all of his concerns in person. Since Appellant has not satisfied this prerequisite for relief by a writ of mandamus, he has offered no basis for reversing the Superior Court's holding that his petition should be denied.

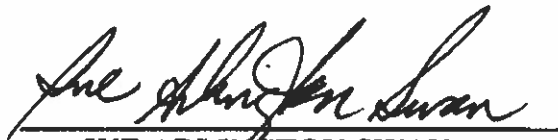
It is paramount to highlight that relief granted by writ of mandamus is an extraordinary remedy requiring extraordinary circumstances. None of Appellant's filings or contentions meets this standard. Because of the evident nature of the Appellant's inability to meet these requirements for a writ of mandamus, we do not find it necessary to analyze the application further.

IV. CONCLUSION

¶13 We conclude that the Superior Court did not err when it denied the Appellant's petition for writ of mandamus. In its order, the Superior Court fully considered the unsupported assertions made by the Appellant, thus demonstrating its careful consideration of his application. Upon review, Appellant not only failed to state and support an adequate ground for relief, thus waiving any identified issues under the rules of this Court, but also failed to meet the standards for the issuance of a writ of mandamus. The Appellant had multiple avenues for pursuing his sought-after relief, *i.e.*, that his complaints be addressed, and from which relief could be obtained. The evidence and claims provided by the Appellant show that remedies were suggested and provided by telephone and encouraged in person. Absent a showing of an extraordinary circumstance for which he may be entitled to relief, the Appellant's request is denied and the Superior Court's July 23, 2020 order is affirmed.

Dated this 7th day of September, 2022.

BY THE COURT:


IVE ARLINGTON SWAN
Associate Justice

ATTEST:

VERONICA J. HANDY, ESQ.
Clerk of the Court

By: 
Deputy Clerk II

Dated: 9-7-22

