SUPREME COURT OF GEORGIA
Case No. S23O1134

July 17, 2023

The Honorable Supreme Court met pursuant to adjournment.

The following order was passed:

PRESIDENT DONALD J. TRUMP v. FANI WILLIS et al.

Petitioner Donald Trump filed, directly in this Court, an "Original Petition for Writs of Mandamus and Prohibition" against Fani Willis, who is the Fulton County District Attorney, and Robert McBurney, who is the Fulton County Superior Court Judge assigned to supervise and assist a special purpose grand jury that Petitioner asserts was empaneled pursuant to OCGA § 15-12-101 et seq. to "investigate facts and circumstances relating directly or indirectly to possible attempts to disrupt the lawful administration of the 2020 elections in the State of Georgia" (hereinafter, the "Special Purpose Grand Jury"). In his original petition, Petitioner seeks (1) to compel Judge McBurney to quash the Special Purpose Grand Jury's report and to bar use of its contents in any future proceedings, whether civil or criminal; (2) to prohibit District Attorney Willis from introducing to a regular grand jury any evidence obtained via the Special Purpose Grand Jury; and (3) to compel District Attorney Willis's disqualification as a "party representative" in any proceeding involving Petitioner. Petitioner contends that such extraordinary relief is necessary in this case because, according to him, the entire special purpose grand jury scheme in Georgia is so vague that it violates his constitutional rights to due process under the law both facially and as applied in this case; because all of the evidence obtained by the Special Purpose Grand Jury is therefore

unlawful; because District Attorney Willis, who he maintains is operating under a conflict of interest as to him, "has signaled" her intent to use the Special Purpose Grand Jury's report and the unlawful evidence obtained by the Special Purpose Grand Jury to secure from a regular grand jury criminal indictments; because the return of those criminal indictments could be imminent, since the superior court recently seated and swore in the regular grand jurors; because the regular grand jury might simply "uncritically ratify" the Special Purpose Grand Jury's findings rather than take its duties seriously; because the criminal process in Georgia—through which he ordinarily would be required to pursue relief—can be "ponderously slow"; and because Petitioner seeks his party's nomination for the Presidency of the United States of America in 2024 such that he would suffer irremediable reputational harm were he to be forced to defend, via the regular channels, an indictment which he contends would be based on unlawful evidence. Petitioner recognizes that the "preferred course" for obtaining extraordinary relief is to petition for it in the superior court and appeal from any adverse decision entered thereon, see *Brown v. Johnson*, 251 Ga. 436 (306 SE2d 655) (1983), and states that in an abundance of caution—and contemporaneously with his filing of this original petition—he has filed a "similar petition" in the superior court.[1] But he argues that the "preferred course" is not "adequate or appropriate here" and contends that this Court should step in and allow him to circumvent the regular judicial process as a way to ensure that prosecutors and courts are not short-circuiting the procedural protections grand juries are meant to provide.

It is true that this Court has the authority to grant original relief in the nature of mandamus and prohibition, see Ga. Const. of 1983, Art. VI, Sec. I, Par. IV, but this Court "has chosen to maintain its general status as an appellate court" and to exercise its original jurisdiction only in extremely rare situations where need has been

[1] Petitioner does not attach a copy of the petition he allegedly filed in the superior court, nor does he indicate what specific relief he sought therein.

shown. See *Graham v. Cavender*, 252 Ga. 123, 124 (311 SE2d 832) (1984); *Carey Canada, Inc. v. Head*, 252 Ga. 23, 25 (310 SE2d 895) (1984). And the Court has made clear that a petitioner cannot invoke this Court's original jurisdiction as a way to circumvent the ordinary channels for obtaining the relief he seeks without making some showing that he is being prevented fair access to those ordinary channels. See *Gay v. Owens*, 292 Ga. 480, 482-483 (738 SE2d 614) (2013) (original jurisdiction exercised only in extremely rare cases); *Brown v. Johnson*, 251 Ga. 436 (306 SE2d 655) (1983) (same); *Kitchens v. State*, 228 Ga. 624 (187 SE2d 268) (1972) (Supreme Court is a court for the correction of errors of law committed in the trial court). Petitioner's claim fails in the light of that precedent; he makes no showing that he has been prevented fair access to the ordinary channels. Notably, Petitioner does not assert that the superior court has denied him the opportunity or ability to seek therein the relief he now requests from this Court. Indeed, he admits that, in March 2023, he submitted, and the superior court clerk filed, motions in which he sought to quash the Special Purpose Grand Jury's report and to disqualify Willis. And, although he complains that Judge McBurney has yet to rule on those motions, he is not asking this Court to compel Judge McBurney to rule.[2] Instead, he is asking this Court to step in and itself decide the motions currently pending in the superior court. This is not the sort of relief that this Court affords, at least absent extraordinary circumstances that Petitioner has not shown are present here.

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[2] And, even if he were asking this Court for such relief, his remedy would be to first file a separate petition for writ of mandamus against Judge McBurney in Fulton County Superior Court, at which point Judge McBurney, being the respondent, would disqualify; another judge would be appointed to hear and determine the matter; and the final decision could then be reviewed on appeal. See *Brown*, 251 Ga. at 437; OCGA § 15-3-3.1 (a) (4). In this regard, we note that, although Petitioner states that he filed a petition for writ of mandamus in the superior court, as *Brown* requires, he admits that he did so *contemporaneously with filing this original petition*—a fact which forecloses the possibility that he has allowed that process sufficient time to play out in the superior court.

Moreover, even if the petition were procedurally appropriate, Petitioner has not shown that he would be entitled to the relief he seeks. As an initial matter, neither *In re Floyd County Grand Jury Presentments for May Term 1996*, 225 Ga. App. 705 (484 SE2d 769) (1997) nor *Harris v. Edmonds*, 119 Ga. App. 305 (166 SE2d 909) (1969)—which are cited by Petitioner in support of quashal as an appropriate remedy here—applies to these facts. Those cases address situations in which a regular grand jury included in its presentments to the superior court (and therefore published in a public way) a report charging or casting reflections of misconduct in office upon a public officer or impugning his character, but without including a presentment or true bill of indictment charging that official with a specific offense against the State. And, while those cases hold that the subjects of such extra-judicial reports are entitled to have those reports *expunged* from the official records, neither suggests that it is appropriate to quash a special purpose grand jury's report based on allegations similar to those that Petitioner makes here. Furthermore, this Court has held that, even where a defendant had established that a special purpose grand jury acted illegally, neither dismissal of the subsequent indictment nor suppression of the evidence was the proper remedy for the grand jury's overreach because no violation of defendant's constitutional rights and no structural defect in the grand jury process occurred. See *State v. Lampl*, 296 Ga. 892, 897-98 (770 SE2d 629) (2015). Indeed, in *Lampl* we held that "grand juries, unlike petit juries, are authorized to consider evidence without regard to its eventual admissibility at trial." Id. at 898; see also *Mitchell v. State*, 239 Ga. 456, 459 (238 SE2d 100) (1977) ("The evidence which the grand jury receives in finding a true bill is not subject to inquiry." (citation and punctuation omitted)). And, with regard to Petitioner's request to disqualify Willis from representing any party in any and all proceedings involving him, we note only that Petitioner has not presented in his original petition either the facts or the law necessary to mandate Willis's disqualification by this Court at this

time on this record. For these additional reasons, Petitioner has not shown that this case presents one of those extremely rare circumstances in which this Court's original jurisdiction should be invoked, and therefore, the petition is dismissed.

All the Justices concur.

SUPREME COURT OF THE STATE OF GEORGIA
Clerk's Office, Atlanta

I certify that the above is a true extract from the minutes of the Supreme Court of Georgia.
Witness my signature and the seal of said court hereto affixed the day and year last above written.

 , Clerk