

IN THE SUPREME COURT OF THE STATE OF DELAWARE

IN THE MATTER OF THE
PETITION OF ANTONIO D.
JONES FOR A WRIT OF
MANDAMUS.

No. 489, 2000

Submitted: October 18, 2000

Decided: October 27, 2000

Before **VEASEY, Chief Justice, BERGER and STEELE**, Justices.

ORDER

This 27th day of October 2000, upon consideration of the petition for a writ of mandamus filed by Antonio D. Jones and the answer and motion to dismiss filed by the State of Delaware, it appears to the Court that:

(1) In November 1993, Antonio D. Jones pled guilty to one count of second degree conspiracy and two counts of possession of cocaine. The Superior Court sentenced Jones to a total of four years of Level V imprisonment, suspended after three years for one year of Level III probation, followed by one year of Level II probation.¹

(2) In December 1997, Jones pled guilty to possession of heroin within 300 feet of a park and possession of a deadly weapon by a person prohibited. The Superior Court sentenced Jones to a total of seven years of

¹ *State v. Jones*, Del. Super., Cr.A.Nos. IN93-04-1432, 1436, 1438, Gebelein, J. (Nov. 15, 1993) (Order).

imprisonment, suspended after five years for two years of probation.² The Superior Court also revoked Jones' probation stemming from his 1993 conviction for possession of cocaine and reimposed the probationary portion of the 1993 sentence.

(3) Jones has applied to this Court for a writ of mandamus. Jones appears to complain that the 1993 probationary sentence, as reimposed in 1997, is excessive and was imposed in violation of his due process rights. Jones appears to request that his probationary sentence be reduced or suspended.

(4) The Superior Court docket in Jones' 1993 case reflects that, by separate orders docketed on August 17, 2000, the Superior Court (i) denied Jones' motion for modification of sentence; and (ii) denied Jones' related petition for a writ of habeas corpus.³ To the extent Jones' mandamus petition now complains that the Superior Court's August 17 orders were issued in error, his petition is unavailing. Jones did not exercise his right to file an appeal from either the August 17 denial of habeas corpus relief or from the

² *State v. Jones*, Del. Super., Cr.A.No. IN97-12-1645I, Gebelein, J. (Dec. 3, 1997) (Order); *State v. Jones*, Del. Super., Cr.A.No. IN97-06-0911W, Gebelein, J. (Dec. 3, 1997) (Order).

³ *See also Jones v. State*, Del. Super., C.A.No. 00M-08-019, Gebelein, J. (Aug. 16, 2000) (Order).

denial of modification of sentence. The extraordinary writ process cannot be used as a substitute for a timely-filed appeal.⁴

(5) This Court may issue a writ of mandamus to compel a trial court to perform a duty, but only when the complainant has a clear right to the performance of the duty, no other adequate remedy is available, and the trial court has failed or refused to perform its duty.⁵ Jones has not demonstrated that he is without an adequate legal remedy for his claims, nor has he demonstrated that the Superior Court has arbitrarily failed or refused to perform a duty owed to him. Absent a clear showing that the trial court has arbitrarily failed or refused to act, “this Court will not issue a writ of mandamus to compel a trial court to perform a particular judicial function, to decide a matter in a particular way, or to dictate the control of its docket.”⁶

NOW, THEREFORE, IT IS ORDERED that the State’s motion to dismiss is GRANTED. Jones’ petition for a writ of mandamus is DISMISSED.

BY THE COURT:

/s/ Myron T. Steele
Justice

⁴ See *Matushefske v. Herlihy*, Del. Supr., 214 A.2d 883, 885 (1965).

⁵ *In re Bordley*, Del. Supr., 545 A.2d 619, 620 (1988).

⁶ *Id.*