

IN THE SUPREME COURT OF THE STATE OF DELAWARE

IN THE MATTER OF THE §
PETITION OF DONNELL L. § No. 226, 2000
SEENEY FOR A WRIT OF §
MANDAMUS. §

Submitted: June 5, 2000
Decided: June 23, 2000

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

ORDER

This 23rd day of June 2000, upon consideration of the petition of Donnell L. Seeney (“Seeney”) for a writ of mandamus and the State of Delaware’s answer and motion to dismiss, it appears to the Court that:

(1) In February 1994, Seeney pled guilty to Attempted Second Degree Robbery and Second Degree Assault. In October 1994, the Superior Court sentenced Seeney to ten years at Level V imprisonment, suspended after five years, for four years at a Level IV halfway house, suspended after six months, for three-and-a-half years at Level III probation, suspended after one year, for three-and-a-half years at Level II probation.¹

(2) In June 1995, Seeney filed a motion for postconviction relief. The Superior Court denied the motion in November 1995. Seeney did not appeal. On May 1, 2000, Seeney again filed a motion for postconviction relief.

¹ *State v. Seeney*, Del. Super., Cr.A.Nos. IN93-12-1472 & 1474.

Seeney's motion was referred to a Superior Court judge on May 15, 2000. On May 11, 2000, Seeney filed a motion for modification of sentence. Seeney's motion was referred to a Superior Court judge on May 30, 2000. Seeney's motions are pending before the Superior Court.

(3) In his petition in this Court, Seeney seeks a writ of mandamus to compel the Superior Court to correct his October 1994 sentence. Seeney appears to allege that the Superior Court has failed to correct an acknowledged error in the sentencing order, despite the Court's two attempts to do so.² Seeney contends that he raised the alleged problem in his recent motion for postconviction relief, but that the Superior Court "refuses to comply."

(4) This Court will issue a writ of mandamus to a trial court only when the petitioner can show that there is a clear right to the performance of a duty at the time of the petition, no other adequate remedy is available, and that the trial court has failed or refused to perform the duty.³ "[T]his Court will not issue a writ of mandamus to compel a trial court to perform a particular judicial

² In its answer and motion to dismiss, the State asserts that, in November 1994 and February 1995, the Superior Court corrected the 1994 sentencing order "to make it clear that Seeney had pled guilty to attempted second degree robbery, a lesser included offense of second degree robbery." It appears from the Superior Court docket that the November 1994 and February 1995 orders correct the 1994 sentencing order to state that Seeney pled guilty to "robbery 2nd."

³ *In re Bordley*, Del. Supr., 545 A.2d 619, 620 (1988).

function, to decide a matter in a particular way, or to dictate the control of its docket.”⁴

(5) Seeney’s mandamus petition manifestly fails to invoke this Court’s original jurisdiction. Seeney has not demonstrated that he is entitled to the relief he seeks. Furthermore, Seeney has not demonstrated that he is without an adequate remedy. To the extent Seeney complains that the Superior Court has refused to rule on his postconviction motion, his petition is without merit. The passage of one month since Seeney’s postconviction motion was referred to a Superior Court judge is not evidence of the judge’s arbitrary refusal or failure to rule on the motion.⁵

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

BY THE COURT:

/s/ Carolyn Berger
Justice

⁴ *Id.*

⁵ *In re Brookins*, Del. Supr., 736 A.2d 204, 206 (1999).