

IN THE SUPREME COURT OF THE STATE OF DELAWARE

JAMES W. RILEY,	§
	§
Plaintiff Below-	§ No. 589, 1999
Appellant,	§
	§
v.	§ Court Below—Superior Court
	§ of the State of Delaware,
STANLEY TAYLOR, ROBERT	§ in and for New Castle County
SNYDER, and RONALD	§ C.A. No. 98C-09-247
HOSTERMAN,	§
	§
Defendants Below-	§
Appellees.	§

Submitted: March 2, 2000
Decided: March 30, 2000

Before **VEASEY**, Chief Justice, **WALSH**, and **HOLLAND**, Justices.

ORDER

This 30th day of March 2000, upon consideration of the appellant's opening brief and the appellees' motion to affirm,¹ it appears to the Court that:

(1) The appellant, James W. Riley, filed this appeal from the Superior Court's denial of his petition for a writ of mandamus. The State, on behalf of the appellees, has filed a motion to affirm the Superior Court's

¹Riley filed a response to the State's motion to affirm on March 2, 2000. Such a response is not permitted under Supreme Court Rule 25. Accordingly, Riley's response is hereby stricken as a non-conforming document. *See* Supr. Ct. R. 34.

judgment on the ground that it is manifest on the face of Riley's opening brief that his appeal is without merit.² We agree and affirm.

(2) Riley is an inmate incarcerated at the Delaware Correctional Center (DCC). He filed a petition for a writ of mandamus in order to compel the appellees, who are Department of Correction (DOC) officials, to provide him with access to a complete set of DOC rules and regulations, including prison grievance procedures, inmate classification procedures, rules for the treatment of death-sentenced inmates, and rules for the general composition of protected custody. Riley contended that without access to this material, he could not prepare a proper petition challenging the DOC's decision to place him in the Maximum Security Unit (MSU) within DCC. Accordingly, Riley argued, the DOC denied him his First Amendment right to petition the government for redress of his grievances.

(3) On January 6, 1999, the Superior Court granted the State's motion to dismiss Riley's petition as to all of the requested documents except the grievance procedures. The Superior Court concluded that the DOC had not arbitrarily or capriciously refused to perform a duty owed to Riley

²See Supr. Ct. R. 25(a).

because, based on recently-enacted legislation,³ Riley was not entitled to access any of the documents he requested other than the grievance procedures. The Superior Court stayed its decision on Riley's access to the grievance procedures pending an affidavit from Riley setting forth his attempts to gain access. On March 1, 1999, after Riley filed an affidavit setting forth his failed attempts to gain access to the grievance procedures, the Superior Court denied the remaining ground of the State's motion to dismiss.

(4) The State later renewed its motion to dismiss and attached to it an affidavit stating that Riley had never requested access to the grievance procedures. The Superior Court treated the State's motion as a motion for summary judgment. On August 12, 1999, the Superior Court again deferred its decision on the motion pending the submission of a further affidavit from Riley regarding his attempts to access the grievance procedures. The Superior Court noted that Riley's failure to file an affidavit would result in dismissal of the case. Despite several opportunities to do so, Riley failed to file his supplemental affidavit. Accordingly, on November 15, 1999, the Superior Court dismissed the case with prejudice.

³11 Del. C. §§ 4322(c), (d), 6535.

(5) We conclude that the Superior Court's dismissal of Riley's mandamus petition was entirely correct. A writ of mandamus is a command that may be issued by the Superior Court to an inferior court, public official, or agency to compel the performance of a duty to which the petitioner has established a clear legal right.⁴ The denial of Riley's petition for access to any documents other than the grievance procedures was appropriate because the DOC had no duty to provide Riley with those documents.

(6) Moreover, we find no error or abuse of discretion in the Superior Court's dismissal of Riley's petition on the issue of his access to DOC grievance procedures. Riley was given several chances to rebut the State's assertion that he had never requested access to the grievance procedures. Without a counter-affidavit from Riley countering the State's assertion, Riley could not establish that the DOC had arbitrarily refused to perform a duty owed to him.⁵

(7) Accordingly, we find it manifest on the face of Riley's opening brief that his appeal is without merit because the issue on appeal is controlled

⁴*See Clough v. State*, Del. Supr., 686 A.2d 158, 159 (1996).

⁵*In re Hyson*, Del. Supr., 649 A.2d 807, 808 (1994).

by settled Delaware law and, to the extent that judicial discretion is implicated, clearly there was no abuse of discretion.

NOW, THEREFORE, IT IS ORDERED that the State's motion to affirm is GRANTED. The judgment of the Superior Court is AFFIRMED.

BY THE COURT:

s/ Joseph T. Walsh
Justice