

IN THE SUPREME COURT OF THE STATE OF DELAWARE

IN THE MATTER OF THE           §  
PETITION OF GIBSON A. HALL   § No. 59, 2000  
FOR A WRIT OF MANDAMUS.     §

Submitted: March 1, 2000  
Decided:   March 16, 2000

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

**ORDER**

This 16th day of March 2000, it appears to the Court that:

(1) On October 24, 1995, Gibson A. Hall (“Hall”), an inmate formerly incarcerated in the State of Delaware, brought a civil action in the Superior Court pursuant to 42 *U.S.C.* § 1983 against various officials of the Department of Correction and the Attorney General of the State of Delaware (“defendants”).<sup>1</sup> At the present time and for the foreseeable future, Hall is incarcerated in New Mexico. Initially, Hall’s case was assigned to Superior Court Judge William T. Quillen. In September 1999, the case was reassigned to Superior Court Judge John E. Babiarz, Jr.

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<sup>1</sup> *Hall v. McGuigan, et al.*, Del. Super., C.A. No. 95C-10-222-JEB.

(2) On November 22, 1999, and again on January 24, 2000, Hall filed requests for a pretrial conference. It appears from the Superior Court docket that the Prothonotary promptly referred Hall's requests to Judge Babiarz for consideration. It does not appear that Judge Babiarz has taken any action on Hall's requests for a pretrial conference.

(3) Hall seeks to invoke this Court's original jurisdiction to issue an extraordinary writ of mandamus to compel the Superior Court to conduct a pretrial conference or to rule on Hall's pending requests for a pretrial conference. The defendants have filed an answer and motion to dismiss Hall's petition. We find that Hall's petition for a writ of mandamus manifestly fails to invoke the jurisdiction of this Court. Accordingly, the petition must be dismissed.

(4) A writ of mandamus is an extraordinary remedy issued by this Court to compel a trial court to perform a duty.<sup>2</sup> As a condition precedent to the issuance of the writ, Hall must demonstrate: that he has a clear right to

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<sup>2</sup> *In re Hyson*, Del. Supr., 649 A.2d 807, 808 (1994).

the performance of the duty; that no other adequate remedy is available; and that the trial court has arbitrarily failed or refused to perform its duty.<sup>3</sup>

(5) To the extent Hall requests that this Court compel the Superior Court to conduct a pretrial conference, his petition fails to invoke the jurisdiction of this Court. Hall has not established a clear legal right to a pretrial conference. Moreover, in view of Hall's pending requests for a pretrial conference, he has not established that he is without an adequate legal remedy. Consequently, a writ of mandamus is inappropriate under the circumstances.

(6) To the extent Hall requests that this Court compel the Superior Court to act on Hall's pending requests for a pretrial conference, Hall's petition also fails to invoke the original jurisdiction of this Court. Mandamus will not issue to dictate the control of a trial court's docket, except upon a clear showing of an arbitrary refusal to act.<sup>4</sup> The passage of three months

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<sup>3</sup> *Id.*

<sup>4</sup> *In re Bordley*, Del. Supr., 545 A.2d 619, 620 (1988).

since the filing of Hall's first request for a pretrial conference does not indicate an arbitrary refusal to act on his request.<sup>5</sup>

NOW, THEREFORE, IT IS HEREBY ORDERED that the defendants' motion to dismiss is GRANTED. Hall's petition for a writ of mandamus is DISMISSED.

BY THE COURT:

/s/ Joseph T. Walsh  
Justice

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<sup>5</sup> See *In re Brookins*, Del. Supr., 736 A.2d 204, 206 (where the passage of four months since a postconviction motion was referred to a Superior Court judge was not evidence of an arbitrary refusal or failure to rule on the motion).