

IN THE SUPREME COURT OF THE STATE OF DELAWARE

IN THE MATTER OF THE                    §  
PETITION OF VINCENT                   § No. 31, 2005  
GRAHAM FOR A WRIT OF                §  
MANDAMUS                                §

Submitted: February 18, 2005  
Decided: March 9, 2005

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

**ORDER**

This 9th day of March 2005, upon consideration of Vincent Graham's petition for a writ of mandamus and the State's response thereto, it appears to the Court that:

(1) Vincent Graham has filed a petition requesting this Court to issue an extraordinary writ of mandamus directing the Superior Court to decide, within 20 days, numerous motions he filed in that court in December 2004.<sup>1</sup> All of Graham's motions involve a violation of probation (VOP) warrant filed against him.

(2) The State has filed a motion to dismiss Graham's petition for a writ of mandamus. The State contends that Graham is not entitled to an

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<sup>1</sup> One of Graham's motions, which requested production of his probation and parole records, was denied by the Superior Court on December 28, 2004. Clearly, as to that motion, Graham's petition for a writ of mandamus is moot.

extraordinary writ because the passage of time since Graham filed his motions does not reflect an arbitrary refusal by the Superior Court to act on his motions.

(3) We agree. A writ of mandamus is an extraordinary remedy that will issue only if there is no other available remedy and the petitioner can establish that the trial court has arbitrarily refused to perform a duty to which the petitioner has a clear legal right.<sup>2</sup> The passage of less than three months is not by itself sufficient evidence that the Superior Court has arbitrarily refused to perform a duty to which Graham has a clear legal right.<sup>3</sup>

NOW, THEREFORE, IT IS ORDERED that Graham's petition for the issuance of an extraordinary writ of mandamus is DISMISSED.

BY THE COURT:

/s/ Randy J. Holland  
Justice

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

<sup>3</sup> *See In re Brookins*, 736 A.2d 204, 206 (Del. 1999) (passage of four months insufficient to show judge's arbitrary refusal to act ).