

IN THE SUPREME COURT OF THE STATE OF DELAWARE

IN RE THE PETITION OF §
MICHAEL T. HYSON FOR A § No. 435, 2005
WRIT OF MANDAMUS §

Submitted: October 12, 2005
Decided: November 8, 2005

Before **STEELE**, Chief Justice, **HOLLAND** and **RIDGELY**, Justices

ORDER

This 8th day of November 2005, it appears to the Court that:

(1) The petitioner, Michael T. Hyson, seeks to invoke this Court's original jurisdiction to issue an extraordinary writ of mandamus¹ to compel the Superior Court to grant his petition for a writ of habeas corpus and order that he be released from custody. The State of Delaware has filed an answer requesting that Hyson's petition be dismissed. We find that Hyson's petition manifestly fails to invoke the original jurisdiction of this Court. Accordingly, the petition must be dismissed.

(2) In January 1992, Hyson pleaded guilty to one count of Unlawful Sexual Intercourse in the First Degree. He was sentenced to 20 years incarceration at Level V, to be suspended after 15 years for probation. Hyson was released from custody in May 2004, but was re-incarcerated in

¹ Del. Const. art. IV, § 11(6); Supr. Ct. R. 43.

December 2004 after being arrested for violating the terms of his conditional release. In August 2005, Hyson filed a petition for a writ of habeas corpus in the Superior Court. In the petition, Hyson argued that the imposition of additional conditions on his sentence amounted to a double jeopardy violation.

(3) A writ of mandamus is an extraordinary remedy issued by this Court to compel a trial court to perform a duty.² As a condition precedent to the issuance of the writ, Hyson must demonstrate that: he has a clear right to the performance of the duty; no other adequate remedy is available; and the trial court has arbitrarily failed or refused to perform the duty.³

(4) Hyson has failed to demonstrate his entitlement to the issuance of a writ of mandamus. He has alleged no facts demonstrating that he has a clear right to the issuance of a writ of habeas corpus by the Superior Court,⁴ that no other adequate remedy is available or that the Superior Court has arbitrarily failed or refused to issue a writ of habeas corpus.

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

³ *Id.*

⁴ Habeas corpus only permits one who is illegally incarcerated to obtain judicial review of the jurisdiction of the court ordering the commitment. *Hall v. Carr*, 692 A.2d 888, 891 (Del. 1997).

NOW, THEREFORE, IT IS ORDERED that the petition for a writ of mandamus is DISMISSED.⁵

BY THE COURT:

/s/ Myron T. Steele
Chief Justice

⁵ Hyson's motion to stay the conditions of his allegedly illegal sentence also is hereby denied.