

IN THE SUPREME COURT OF THE STATE OF DELAWARE

IN THE MATTER OF THE § No. 376, 2005
PETITION OF JON WHITE FOR §
A WRIT OF MANDAMUS. § Def. ID No. 9708020598

Submitted: September 6, 2005
Decided: December 2, 2005

Before **BERGER, JACOBS** and **RIDGELY**, Justices.

ORDER

This 2nd day of December 2005, upon consideration of the petition for a writ of mandamus filed by Jon White and the answer and motion to dismiss filed by the State of Delaware,¹ it appears to the Court that:

(1) The petitioner, Jon White, seeks to invoke this Court's original jurisdiction to issue a writ of mandamus to compel the Superior Court to credit him with time served at Level V and Level IV supervision. We conclude that White's petition fails to invoke the original jurisdiction of this Court. Accordingly, the petition must be dismissed.

(2) White was arrested on August 28, 1997 and was charged with one count of Unlawful Sexual Intercourse in the Third Degree and one count of Unlawful Sexual

¹The Court has not considered White's unsolicited response to the State's answer and motion to dismiss. *See* Supr. Ct. R. 43(b)(ii) (prohibiting further submissions unless directed by the Court).

Penetration in the Third Degree (“the USI case”). White was incarcerated for approximately fifty days before he was released on bail.²

(3) On December 29, 1997, White was arrested and was charged with Robbery in the Second Degree and other offenses (“the R2 case”). White was held in default of bail on those charges.³ White was also held in default of bail after his February 12, 1998 arrest that led to charges for Robbery in the First Degree and other offenses (“the R1 case”).⁴

(4) On February 9, 1998, White pleaded guilty in the USI case and was sentenced to five years at Level V suspended for time served and probation.⁵ On April 30, 1998, White pleaded guilty in the R2 and the R1 cases and was sentenced to a total of seven years at Level V suspended after four years for probation.⁶

(5) On January 27, 2003, White was adjudged guilty of violation of probation (VOP) and was sentenced. In the R1 case, White was sentenced to two years at Level V suspended after thirty days for Level IV home confinement and

²See *State v. White*, Del. Super., Def. ID No. 9708020598, docket at 12.

³See *State v. White*, Del. Super., Def. ID No. 9712016463, docket at 1.

⁴See *State v. White*, Del. Super., Def. ID No. 9802007941, docket at 1.

⁵*State v. White*, Del. Super., Cr. ID No. 9708020598, Barron, J. (Feb. 9, 1998).

⁶*State v. White*, Del. Super., Cr. ID Nos. 9712016463, 9802007941, Gebelein, J. (Apr. 30, 1998). The Superior Court also reimposed probation in *State v. White*, Del. Super., Cr. ID No. 9702016270 (theft) and *State v. White*, Del. Super., Cr. ID No. 9609004989 (conspiracy).

probation. In both the R2 and the USI cases, White's probation was continued as previously imposed.⁷

(6) On March 17, 2003, White was again adjudged guilty of VOP and was sentenced. In the R1 case, White was sentenced to twenty-one months at Level V suspended immediately for Level IV home confinement and probation. In the USI case, White's probation was continued; in the R2 case, White was discharged as unimproved from probation.⁸

(7) On December 17, 2003, White was adjudged guilty of VOP and was sentenced. In the R1 case, White was sentenced to nine months at Level V suspended immediately for ninety days at the Level IV VOP center. In the USI case, White was sentenced to four years at Level V suspended for probation.⁹

(8) On August 13, 2004, White was again adjudged guilty of VOP in the USI case. White was sentenced to four years at Level V suspended after two years for probation.¹⁰

⁷*State v. White*, Cr. ID Nos. 9802007941, 9708020598, 9712016463, Gebelein, J. (Jan. 27, 2003). White's probation was discharged as unimproved in *State v. White*, Del. Super., Cr. ID No. 9702016270 (theft) and *State v. White*, Del. Super., Cr. ID No. 9609004989 (conspiracy).

⁸*State v. White*, Cr. ID Nos. 9802007941, 9708020598, 9712016463, Gebelein, J. (Mar. 17, 2003).

⁹*State v. White*, Cr. ID Nos. 9802007941, 9708020598, Gebelein, J. (Dec. 17, 2003).

¹⁰*State v. White*, Cr. ID No. 9708020598, Ableman, J. (Aug. 13, 2004).

(9) On December 15, 2004 and March 4, 2005, White filed motions claiming that he was entitled to over eight months of credit for time served in the USI case.¹¹ By order dated July 13, 2005, the Superior Court modified the August 13, 2004 VOP sentence to provide that White would receive fifty-three days of credit for time served in that case.¹²

(10) White did not appeal from the July 13, 2005 modified VOP order. Instead, White filed a petition for a writ of mandamus in this Court.

(11) In his mandamus petition, White claims that the Superior Court failed to rule on his December 2004 and March 2005 motions seeking credit for time served in the USI case. White requests that this Court issue a writ of mandamus compelling the Superior Court to credit him with eight months and twelve days for time that he served at Levels V and IV supervision in the USI case.¹³

(12) A writ of mandamus is an extraordinary remedy issued by this Court to compel a trial court to perform a duty.¹⁴ The Court has the authority to issue a writ of

¹¹It appears that the December 2004 motion was titled “Motion for Credit for Time Previously Served” and was docketed as a motion for modification of sentence. White’s March 2005 motion was titled “Motion for Correction of Illegal Sentence” and was also docketed as a motion for modification of sentence.

¹²*State v. White*, Cr. ID No. 9708020598, Ableman, J. (July 13, 2005).

¹³*But see Johnson v. State*, 1997 WL 70827 (Del. Supr.) (concluding that appellant was not entitled to credit for time served at Level IV supervision).

¹⁴*In re Bordley*, 545 A.2d 619, 620 (Del. 1988).

mandamus only when the petitioner can demonstrate (i) a clear right to the performance of the duty, (ii) no other adequate remedy, and (iii) the trial court's arbitrary failure or refusal to perform the duty.¹⁵ "[T]his Court will not issue a writ of mandamus to compel a trial court to perform a particular judicial function, to decide a matter in a particular way, or to dictate the control of its docket."¹⁶ A petition who has an adequate remedy in the appellate process may not use the extraordinary writ process as a substitute for a properly filed appeal.¹⁷

(13) There is no basis for the issuance of a writ of mandamus in this case. White has not demonstrated a clear right to credit for time served over and above that which he has already received, or that the Superior Court has failed or refused to perform a duty with respect to his December 2004 and March 2005 motions requesting such credit.¹⁸ Moreover, White may not invoke this Court's extraordinary

¹⁵*Id.*

¹⁶*Id.*

¹⁷*Matushefske v. Herlihy*, 214 A.2d 883, 885 (Del. 1965).

¹⁸To the contrary, by virtue of the Superior Court's July 13, 2005 modified VOP sentence order, it appears to this Court that White received credit for the fifty-odd days he spent in jail in default of bail in the USI case. It is not clear one way or the other, and White has not alleged, that he is entitled to credit for time served in the R2 and R1 cases.

writ process to appeal the Superior Court's July 13, 2005 modified VOP sentence order that granted White fifty-three days of credit for time served in the USI case.¹⁹

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

BY THE COURT:

Jack B. Jacobs
Justice

¹⁹*See In re Forehand*, 2002 WL 31681720 (Del. Supr.) (dismissing petition for writ of mandamus in part for petitioner's failure to avail himself of his right to appeal from the denial of his motion for correction of sentence).