

**STATE OF WEST VIRGINIA
SUPREME COURT OF APPEALS**

**Allen Longwell,
Petitioner Below, Petitioner**

vs.) No. 11-0912 (Fayette County 11-C-109)

**David Ballard, Warden, Mt. Olive
Correctional Complex, Respondent Below,
Respondent**

FILED

October 19, 2012
RORY L. PERRY II, CLERK
SUPREME COURT OF APPEALS
OF WEST VIRGINIA

MEMORANDUM DECISION

Petitioner Allen Longwell, pro se, appeals the May 19, 2011, order of the Circuit Court of Kanawha County denying his petition for a writ of mandamus. The respondent warden, by John H. Boothroyd, his attorney, has timely filed a summary response.

The Court has considered the parties' briefs and the record on appeal. The facts and legal arguments are adequately presented, and the decisional process would not be significantly aided by oral argument. Upon consideration of the standard of review, the briefs, and the record presented, the Court finds no substantial question of law and no prejudicial error. For these reasons, a memorandum decision is appropriate under Rule 21 of the Revised Rules of Appellate Procedure.

Petitioner was withdrawn from his welding class at Mt. Olive Correctional Complex. When he filed a grievance, the unit manager denied the grievance, responding as follows:

You must be compliant with your IRPP [Individual Reentry Program Plan] and sign up for mandatory classes as they are offered to you before you can sign up or attend privilege education classes such as vocational and college courses. In the last year, you have refused all mandatory classes including Sex Offender Program, Aladrue I, and CVA.^[1]

¹ Petitioner filed a second, similar grievance. The unit manager denied this second grievance, responding that “[y]ou are afforded the opportunity to attend all education classes as recommended by the unit team on your IRPP.” As found by the circuit court, petitioner appealed the unit manager’s decision through the administrative process “by filing unsuccessful administrative grievances . . . with the Respondent [Warden] and the Commissioner of Corrections.” Therefore, petitioner exhausted his administrative remedies.

The respondent warden's summary response indicates that there is a strong interest in having petitioner complete, before his release, the mandatory classes in his IRPP such as the Sex Offender Program when he has been incarcerated for first degree sexual assault and incest.²

When petitioner filed a petition for a writ of mandamus to compel the respondent warden to reinstate him in his welding class, the circuit court denied the petition with the following pertinent conclusions of law:

4. Petitioner has no clear right to enroll in the welding class in time to graduate [the class] by October, 2011.
5. Respondent has no clear duty to permit Petitioner to be taught the welding trade in order for Petitioner to graduate by October, 2011.
- * * *
7. There is a sufficient, adequate remedy available to Petitioner, i.e., follow the institution, educational rules and regulations.^[3]

On appeal, petitioner argues that the circuit court erred in denying his petition for a writ of mandamus when (1) petitioner is entitled to the opportunity to enroll in vocational classes while incarcerated; and (2) there is no policy, operational procedure, or memorandum at Mt. Olive stating that this opportunity is contingent on petitioner's taking the mandatory classes in his IRPP. The respondent warden argues that this Court should affirm the circuit court's order denying petitioner's petition for a writ of mandamus. The respondent warden argues that while the West Virginia Division of Corrections ("the DOC") must provide inmates with rehabilitative programming, the nature and specific types of programs offered are within the DOC's discretion, citing *Nobles v. Duncil*, 202 W.Va. 523, 505 S.E.2d 442 (1998).

"Mandamus is a proper remedy to compel tribunals and officers exercising discretionary and judicial powers to act, when they refuse so to do, in violation of their duty, *but it is never employed*

² The victim was a ten year old relative of petitioner. Also, according to the respondent warden, at the time of this incident, petitioner was already on parole for child abuse with bodily injury.

³ The circuit court's conclusions of law correspond to the three part test that governs whether to issue a writ of mandamus. See Syl. Pt. 2, *State ex rel. Kucera v. Wheeling*, 153 W.Va. 538, 170 S.E.2d 367 (1969) ("A writ of mandamus will not issue unless three elements coexist--(1) a clear legal right in the petitioner to the relief sought; (2) a legal duty on the part of respondent to do the thing which the petitioner seeks to compel; and (3) the absence of another adequate remedy.").

to prescribe in what manner they shall act, or to correct errors they have made.” Syl. Pt. 8, *Nobles* (quoting Syl. Pt. 1, *State ex rel. Buxton v. O’Brien*, 97 W.Va. 343, 125 S.E. 154 (1924)) (Emphasis added.). In *Nobles*, this Court ruled that while prison officials must provide impartial disciplinary hearing officers and adequate medical care, the manner prison officials go about fulfilling these duties is within their discretion. In the case sub judice, in fulfilling its obligation to provide appropriate rehabilitative programming, the DOC has decided that petitioner must take the mandatory classes in his IRPP before he may continue with classes of his own choosing. Given that petitioner’s criminal history includes sexual assault and violence towards minor children, it would appear well within the DOC’s discretion to require petitioner to take his mandatory classes before he continues with the classes he merely wants to take. Therefore, after careful consideration, this Court concludes that the circuit court did not err in denying petitioner’s petition for a writ of mandamus to compel the respondent warden to reinstate him in his welding class.

For the foregoing reasons, we find no error in the decision of the circuit court and its order denying petitioner’s petition for a writ of mandamus is affirmed.

Affirmed.

ISSUED: October 19, 2012

CONCURRED IN BY:

Chief Justice Menis E. Ketchum
Justice Robin Jean Davis
Justice Brent D. Benjamin
Justice Margaret L. Workman
Justice Thomas E. McHugh