

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE
IN AND FOR NEW CASTLE COUNTY

ROBERT GATTIS)	
)	
Plaintiff)	
v.)	C.A. No. 08M-07-070 RRC
)	
CARL DANBERG,)	
RICK KEARNEY, and)	
PERRY PHELPS)	
)	
Defendants)	
)	

Submitted: December 31, 2008
Decided: March 19, 2009

Upon Defendants' Motion to Dismiss.
GRANTED.

ORDER

Robert Gattis, pro se, James T. Vaughn Correctional Center, Smyrna, Delaware.

Catherine Damavandi, Esquire, Deputy Attorney General, Department of Justice, Wilmington, Delaware, Attorney for Defendants.

COOCH, J.

This 19th day of March, 2008, upon consideration of Defendants'

Motion to Dismiss, it appears to the Court that:

1. Plaintiff Robert Gattis is a death-row inmate who is incarcerated in the James T. Vaughn Correctional Center in Smyrna, Delaware. Plaintiff is housed in the Security Housing Unit (“SHU”), which has the highest supervision level of any facility in Delaware.
2. Defendant Carl Danberg is the Commissioner of the Department of Corrections of the State of Delaware. Defendant Rick Kearney is the Bureau Chief of Prisons of the State of Delaware. Defendant Perry Phelps is the Warden of the Delaware Correctional Center of the State of Delaware.
3. Plaintiff filed a Mandamus Action on July 17, 2008. (See ¶¶ 5-6 of this Order.) Defendants filed a Motion to Dismiss on October 27, 2008 pursuant to Superior Court Civil Rule 12(b)(6).
4. Plaintiff also filed an action pursuant to 42 U.S.C. § 1983 for some of the claims asserted in the instant mandamus action. On March 18, 2008, Plaintiff filed an action in the United States District Court for the District of Delaware against Warden Perry Phelps (a named Defendant in this case) alleging that inmates are entitled to receive *Playboy* magazines at the prison. Plaintiff’s § 1983 action was dismissed on July 1, 2008.¹ Two weeks later, Plaintiff filed his mandamus action in this Court. On July 30, 2008, Plaintiff

¹ *Gattis v. Phelps*, 2008 WL 2609383 (D. Del.).

filed a notice of appeal of the district court's opinion with the Third Circuit Court of Appeals. That appeal is apparently pending.

5. 10 *Del. C.* § 564 provides for the issuance of a writ of mandamus.² A writ of mandamus is an extraordinary remedy, which this Court will not issue unless Plaintiff establishes a "clear right" to the performance of a duty, and that no other adequate remedy is available.³

6. Plaintiff contends that Defendants have failed to comply with Department of Corrections' ("DOC") Inmate Grievance Procedures and that Defendants have failed to provide access to a copy of the Inmate Grievance Procedures in each housing unit. Plaintiff's requested relief includes an order requiring Defendants to receive "retraining on the administration, operation and training of the Inmate Grievance Procedure . . . from an independent outside agency," and a writ of mandamus ordering Defendants to comply with DOC policies, Bureau of Prisoners procedures, and the Delaware Code.

7. In connection with his claim that Defendants did not comply with Inmate Grievance Procedures, Plaintiff attached as exhibits grievance forms

² That section provides, in pertinent part, that "if the Court orders that the plaintiff is entitled to the relief prayed for or any part thereof, a peremptory writ of mandamus shall issue forthwith...." 10 *Del. C.* § 564.

³ *Schagrin Gas Co. v. Evans*, 418 A.2d 997 (Del. 1980).

filed by him requesting (1) servicing of the inmate TV system (Inmate Grievance Chairperson responded that TV repair contractor had been contacted and that reception could not be improved);⁴ (2) an extension [cord] for his headphone set (denied as prohibited by prison regulations);⁵ (3) an accounting of personal property that Plaintiff was not permitted to take with him when he was transferred to SHU (denied because Plaintiff admitted he sent some items out with a visitor and Plaintiff did not include proof of possession);⁶ (4) a copy of the Inmate Reference Manual and Inmate Grievance Procedure accessible in SHU (Inmate Grievance Chairperson responded that copies of both are available in SHU Law Library and that Plaintiff should write to Mr. Engrem, the law paralegal);⁷ (5) reimbursement for a \$4.00 charge for dental visits (this matter appears to have been resolved and Plaintiff will be reimbursed \$4.00);⁸ and (6) that Plaintiff's *Playboy* magazines be given to him or retained during the

⁴ Comp., Docket Item ("D.I") 1, Ex. A.

⁵ *Id.*

⁶ *Id.*

⁷ *Id.* at Ex. B.

⁸ *Id.* at Ex. C, D, E, F, G, H.

pendency of his appeal (denied because possession of *Playboy* magazine is prohibited by DOC Policy No. 4.5).⁹

7. The issuance of a mandamus falls within judicial discretion and is not a matter of right.¹⁰ This Court may issue a mandamus “to an inferior court, public official, or agency to compel the performance of a duty to which the petition has established a clear right.”¹¹ Further, “when directed to an administrative agency or public official, mandamus will issue only to require performance of a clear legal or ministerial duty.”¹² Thus, a mandamus will not be issued to compel a discretionary act.¹³ If a petitioner cannot show a clear right to the requested performance of a duty, or if there is any doubt as to a petitioner's right, a mandamus shall not be issued by this Court.¹⁴

⁹ *Id.* at Ex. I.

¹⁰ *Guy v. Greenhouse*, 637 A.2d 287 (Del.1993).

¹¹ *Clough v. State*, 686 A.2d 158, 159 (Del.1996).

¹² *Guy*, 637 A.2d at 287 (citing *Capital Educ. Assoc. v. Camper*, 320 A.2d 782 (Del. Ch.1974)).

¹³ *Id.* (citing *Darby v. New Castle Gunning Bedford Educ. Assoc.*, 336 A.2d 209, 211 (Del.Super.Ct.1975) (holding that a statute which included the word “agreement” was a statute which intended discretion based on the very nature of the word “agreement.”)); *Defore v. Williams*, 1999 WL 1442003, * 2 (Del.Super.Ct.) (noting that a prisoner has no right of mandamus to obtain copies of policies, grievance procedures or disciplinary rules since 11 Del. C. § 6535 places the discretion in the hands of the Commissioner of the appropriate time and place to allow copies of said documents.).

¹⁴ *In the matter of Michael J. Richardson*, 2002 WL 162291 (Del.Super.Ct.2002) (citing *State ex rel. Lyons v. McDowell*, 57 A.2d 94, 97 (Del.Super.Ct.1947)) (holding that a

8. With respect to prison policies, “a court will only intervene in the limited instance where an inmate's statutory or constitutional rights are affected and a writ of mandamus is not an appropriate tool to merely assure a prison policy is being adhered to.”¹⁵ Where a copy of the inmate grievance procedures “is available upon request, it cannot be said that access to those procedures is unreasonable.”¹⁶ Plaintiff attached to his Complaint a copy of DOC Policy No. 4.5, each page of which was marked “SHU Law Library.”¹⁷ It therefore appears to this Court that Plaintiff had access to DOC policies. 9. Upon consideration of the parties’ submissions and relevant law, the Court holds that Plaintiff has failed to show that he has a “clear right” to the performance of any duty. Because Plaintiff has failed to state a claim upon which relief can be granted, the Court grants Defendants’ Motion to Dismiss.

IT IS SO ORDERED.

Richard R. Cooch

prisoner's right to possess personal items is not absolute and is subordinate to the safety of individuals within the prison.).

¹⁵ *Walls v. Williams*, 2006 WL 1133563, * 1 (Del. Super.) (citing *Ross v. Dep't of Corr.*, 722 A.2d 815, 820 (Del.Super.Ct.1998)).

¹⁶ *Riley v. Taylor*, 1999 WL 743899, *1 (Del. Super.), *aff'd*, 2000 WL 431571 (Del.).

¹⁷ *Comp.*, Ex. J.

oc: Prothonotary