

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

JESUS L. PINKSTON,	)	
	)	
Petitioner,	)	
	)	
v.	)	
	)	C.A. No. N13-05-117-MMJ
DELAWARE DEPARTMENT OF	)	
CORRECTION, JAMES T. VAUGHN	)	
CORRECTIONAL CENTER,	)	
COMMISSIONER OF CORRECTION	)	
CARL C. DANBERG, and WARDEN	)	
PERRY PHELPS,	)	
	)	
Respondents.	)	

Submitted: September 3, 2013  
Decided: December 4, 2013

On Respondents' Motion to Dismiss  
Pursuant to Superior Court Civil Rule 12(b)(6)

**GRANTED**

**OPINION**

Jesus L. Pinkston, Petitioner, *Pro Se*

Stuart B. Drowos, Esquire, Department of Justice, Attorney for Respondents

**JOHNSTON, J.**

## **FACTUAL AND PROCEDURAL HISTORY**

Petitioner Jesus L. Pinkston is a sentenced inmate incarcerated at the James T. Vaughn Correctional Center (“JTVCC”) in Smyrna, Delaware. Pinkston filed a “Petition for Writ of Mandamus” on May 21, 2013. Pinkston was granted *in forma pauperis* status on May 28, 2013. Pinkston alleges Fifth and Fourteenth Amendment Due Process violations and Eighth Amendment cruel and unusual punishment violations. Pinkston’s allegations arise out of being reassigned to the Security Housing Unit after an institutional infraction that occurred on November 22, 2012. At the time of the institutional infraction, Pinkston was housed in a medium security unit.

Pinkston alleges in his Petition that: (1) his classification was not in accordance with 11 *Del. C.* § 6530, the Delaware Department of Corrections (“DOC”) Procedures, and the Due Process Clause of the Fourteenth Amendment; (2) the DOC has improperly classified him by failing to comply with the Delaware Superior Court’s Criminal Sentencing Order indicating that Petitioner should receive a mental health evaluation and treatment as a condition of his confinement; and (3) he has a liberty interest in avoiding segregation to earn good-time credits pursuant to 11 *Del. C.* §§ 4371-4372. Pinkston moves the Court to direct Respondents to: (1) ascertain his mental health history and file it on record with the DOC; (2) consider his mental health history in his reclassification and subsequent

classifications; (3) reclassify Pinkston to a lower security status and assign him to a treatment program.

## **STANDARD OF REVIEW**

### ***Motion to Dismiss***

Respondents filed a 12(b)(6) Motion to Dismiss for failure to state a claim upon which relief can be granted on July 11, 2013. The Court must determine if Pinkston has a viable cause of action.<sup>1</sup> Pinkston’s claim may not be dismissed “unless it appears to a certainty that under no set of facts which could be proved to support the claim asserted would the [petitioner] be entitled to relief.”<sup>2</sup> When applying this standard, the Court will accept all well-pleaded allegations as true.<sup>3</sup> The Court will draw reasonable inferences in a light most favorable to the non-moving party.<sup>4</sup> If Pinkston may recover, the Court must deny the Motion to Dismiss.<sup>5</sup>

### ***Writ of Mandamus***

“In Delaware the law as to mandamus is well settled. The writ is extraordinary and appropriate only when a plaintiff is able to establish a clear legal

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<sup>1</sup> *Proctor v. Taylor*, 2006 WL 1520085, at \*1 (Del. Super.).

<sup>2</sup> *Plant v. Catalytic Constr. Co.*, 287 A.2d 682, 686 (Del. Super. 1972).

<sup>3</sup> *Spence v. Funk*, 396 A.2d 967, 968 (Del. 1978).

<sup>4</sup> *In re Gen. Motors (Hughes) S'holder Litig.*, 897 A.2d 162, 168 (Del. 2006).

<sup>5</sup> *Id.*

right to the performance of a non-discretionary duty.”<sup>6</sup> It is a remedial writ, designed to enforce the performance of legal duties.<sup>7</sup> The remedy is extraordinary.<sup>8</sup> If the right is doubtful, or the duty discretionary, or the power to perform the duty wanting or inadequate, or if there is any other specific and adequate legal remedy, the petitioner is not entitled to a writ of mandamus.<sup>9</sup> The petitioner must establish a clear right to the requested relief.<sup>10</sup> It is within the Court's discretion whether the issuance of such a writ is justifiable.<sup>11</sup>

## ANALYSIS

### *Classification Claim*

Pinkston alleges that he has not been properly classified in accordance with 11 *Del. C.* § 6530 because the classification committee has not considered his psychological history.<sup>12</sup> Pinkston believes that the classification committee has not considered his psychological history because the committee did not recommend or

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<sup>6</sup> *Darby v. New Castle Gunning Bedford Ed. Ass'n*, 336 A.2d 209, 210 (Del. 1975).

<sup>7</sup> *Mell v. New Castle County*, 835 A.2d 141, 145 (Del. Super. 2003).

<sup>8</sup> *Id.*

<sup>9</sup> *Joyner v. Family Court–New Castle County*, 2011 WL 2038777, at \*1 (Del. Super.).

<sup>10</sup> *Id.*

<sup>11</sup> *Ingersoll v. Rollins Broadcasting of Del., Inc.*, 272 A.2d 336, 338 (Del. 1970).

<sup>12</sup> Petition at pp. 12-13.

assign him to a treatment program.<sup>13</sup> Pinkston states that he provided his psychological evaluation to the staff at JTVCC on several occasions.

Respondents contend that Pinkston has not established a right to the performance of a non-discretionary duty.

The Delaware Code establishes procedures for the classification of inmates:

Immediately after a person who has been sentenced to 90 days or more of imprisonment is received at any institution under the jurisdiction of the Department, a classification committee shall obtain and file complete information with regard to such person. . . . When all such existing available records have been assembled, each such classification committee shall determine whether or not any further investigation is necessary, and, if so, it shall make such additional investigation. Each classification committee shall determine and prescribe the custodial and rehabilitation program and the care for each person coming under its jurisdiction. The classification committee shall determine the persons who shall work and labor and shall assign persons to jobs, studies and programs according to their abilities and in the manner best calculated to effectuate their training and rehabilitation.<sup>14</sup>

Pinkston was classified to the Security Housing Unit after an institutional infraction. Pinkston received correspondence on two separate occasions confirming that his classification and housing were the result of the institutional

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<sup>13</sup> Petition at p. 13.

<sup>14</sup> 11 *Del. C.* § 6530.

points he had accrued.<sup>15</sup> While Pinkston characterizes the November 22, 2012, infraction as relatively trivial, the point system is cumulative.

The Court views reasonable inferences in the light most favorable to the non-moving party. However, it would be unreasonable to infer that the classification committee failed to meet its duty under 11 *Del. C.* § 6530 simply because Pinkston was not assigned to a treatment program.

Security classifications are within the sound discretion of the DOC.<sup>16</sup> The Superior Court will not interfere with the disciplinary or classification decisions of the DOC in the absence of manifest injustice.<sup>17</sup> The DOC is charged with the extraordinarily difficult responsibility of balancing the individual rights of inmates, with the collective rights of those persons entrusted to the DOC's care, as well as with the overarching safety interests of DOC staff. Section 6530 evidences the Delaware General Assembly's recognition of the need for flexibility and discretion

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<sup>15</sup> Petition, Ex. 3, Ex. 12. Exhibit 3 is a note from Capt. Rispoli, received by Pinkston on January 30, 2013, stating "Counselor McMahon tells me that you have 17 points and was [sic] classified to maximum security . . . ." Exhibit 12 is a letter from Mike DeLoy, Bureau Chief of Prisons, dated March 18, 2013, stating "Your housing was established by your classification and 22 pts (Max) which was completed at HRYCI."

<sup>16</sup> *Stewart v. Snyder*, 1999 WL 1611428, at \*1 (Del. Super.).

<sup>17</sup> *See Ross v. Dept. of Corr.*, 722 A.2d 815, 820 (Del. Super. 1998) (Finding that, when the circumstances surrounding a prisoner's confinement do not violate constitutional or statutory rights, "the courts will defer to the sound discretion of the legislative and executive branches in the execution of correctional policies." This deference is particularly applicable regarding security and penological issues.).

in classification, discipline, and assignment to programs and labor. The Petition fails on its face to establish a clear legal right to a non-discretionary duty.

### ***Constitutional Claims***

Pinkston claims that his Fourteenth Amendment right to due process was violated when he was reclassified without notice on November 26, 2012, and also when he attempted to appeal his classification. Pinkston alleges that he has a liberty interest in avoiding segregation in order to earn good-time credits pursuant to 11 *Del. C.* §§ 4371-4372. Pinkston alleges that his Eighth Amendment right to be free from cruel and unusual punishment was violated.

Pinkston is seeking a writ of mandamus to correct an alleged violation of his constitutional rights. However, the proper remedy for a violation of constitutional rights is through a 42 U.S.C. § 1983 action in the United States District Court, and not through the issuance of a writ of mandamus by this Court.<sup>18</sup> Because Pinkston fails to meet one of the requirements for an issuance of a writ of mandamus—that mandamus is his sole avenue for relief—mandamus is inappropriate.<sup>19</sup>

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<sup>18</sup> *Washington v. Dept. of Corr.*, 2006 WL 1579773, at \*2 (Del. Super.); *Parker v. Kearney*, 2000 WL 1611119, at \*5 (Del. Super.) (“[P]etitioner claims various constitutional violations occurred as a result of the denial of his job. The appropriate remedy for these violations is an action pursuant to 42 U.S.C. § 1983. Thus, petitioner has an adequate remedy at law, and the mandamus action is inappropriate.”).

<sup>19</sup> *Washington v. Dept. of Corr.*, 2006 WL 1579773, at \*2.

Both Petitioner and Respondents have made arguments based on materials and alleged facts not included in the Petition. On a motion to dismiss, the Court may not consider matters outside of the Petition.<sup>20</sup> All reasonable inferences may be considered in the light most favorable to the Petitioner.<sup>21</sup> However, in the interest of providing a more fulsome analysis, the Court will consider the merits of Petitioner's constitutional claims.

*Fourteenth Amendment – Due Process*

Respondents argue that Pinkston does not have a state-created liberty interest in his classification status<sup>22</sup> and that classification at a particular security level is not an interest protected by the Fourteenth Amendment.<sup>23</sup>

“To prove a violation of the Due Process Clause, [Petitioner] must show that (1) a constitutionally protected liberty or property interest is at issue and (2) if so, that the state did not give him notice or an opportunity to be heard prior to depriving him of that protected interest.”<sup>24</sup> “Liberty interests protected by the

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<sup>20</sup> *Malpiede v. Townson*, 780 A.2d 1075, 1082 (Del. 2001).

<sup>21</sup> *In re Gen. Motors (Hughes) S'holder Litig.*, 897 A.2d at 168.

<sup>22</sup> *Brown v. Cunningham*, 730 F. Supp. 612, 615 (D. Del. 1990); *Bagwell v. Prince*, 683 A.2d 58, at \*2 (Del. 1996).

<sup>23</sup> *Hewitt v. Helms*, 459 U.S. 460, 466-68 (1983).

<sup>24</sup> *Clyne v. Corr. Med. Serv.*, 2004 WL 502215, at \*3 (D. Del.).



Fourteenth Amendment may arise from two sources – the Due Process Clause itself and the laws of the States.”<sup>25</sup>

“The United States Supreme Court has held that an inmate does not have a constitutionally-protected liberty interest in remaining in a particular level or classification of custody.”<sup>26</sup> “Notwithstanding the lack of a federal constitutional claim, an inmate may possess privileges and rights in his classification status if these privileges and rights evolve from state statutes or regulations.”<sup>27</sup> “Neither Delaware law nor Delaware Department of Correction regulations create a liberty interest in a prisoner's classification within an institution.”<sup>28</sup> Because Pinkston was not deprived of a constitutionally-protected liberty interest, Pinkston’s due process claim fails.<sup>29</sup>

Pinkston further alleges that he has a liberty interest in avoiding segregation in order to earn good-time credits. The Court finds this argument to be without

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<sup>25</sup> *Hewitt v. Helms*, 459 U.S. at 466.

<sup>26</sup> *Nicholson v. Snyder*, 616 A.2d 1214, at \*1 (Del. 1992) (citing *Hewitt v. Helms*, 459 U.S. at 466-67).

<sup>27</sup> *Nicholson v. Snyder*, 616 A.2d 1214, at \*1.

<sup>28</sup> *Shockley v. Hosterman*, 2007 WL 1810480, at \*3 (D. Del.). See 11 Del. C. § 6529(e).

<sup>29</sup> See *Brown v. Cunningham*, 730 F. Supp. at 615.

merit. “The Due Process Clause does not by itself guarantee the right to earn good-time credits.”<sup>30</sup>

*Eighth Amendment – Cruel and Unusual Punishment*

Pinkston alleges that his Eighth Amendment right to be free from cruel and unusual punishment has been violated. Pinkston contends that twelve months in the Security Housing Unit is disproportionate to his November 22, 2012 institutional infraction.

The Court finds Pinkston’s argument to be without merit. “The Eighth Amendment has been interpreted to prohibit only punishments that are *disproportionate* to the crime or are *excessive*.”<sup>31</sup>

The DOC uses a point-based system. Inmates accrue points during institutional infractions and inmates can complete programming to reduce their points. Pinkston characterizes the November 22, 2012, incident as isolated, however, Mike DeLoy, Bureau Chief of Prisons, and Captain Rispoli both communicated to Pinkston in the spring of 2013 that his cumulative points played a role in his housing assignment. Pinkston’s characterization that he was placed in the Security Housing Unit based on one infraction is inconsistent with the documentation he has provided with his Petition.

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<sup>30</sup> *Abdul-Akbar v. Dept. of Corr.*, 910 F. Supp. 986, 1003 (D. Del. 1995).

<sup>31</sup> *Wallace v. State*, 956 A.2d 630, 639 (Del. 2008) (emphasis in original).

Temporary placement in a security housing unit, in response to a documented disciplinary infraction, does not rise to the level of segregative confinement or sensory deprivation that would violate Petitioner's Eighth Amendment rights.<sup>32</sup> To establish an Eighth Amendment violation based on conditions of confinement, "a plaintiff must prove that defendants acted with deliberate indifference to deprive them of 'the minimal civilized measure of life's necessities.'" <sup>33</sup>

### **CONCLUSION**

The Court finds that the Petitioner has failed to state a claim upon which relief can be granted. In the Petition for a Writ of Mandamus, Petitioner alleges violations of his constitutional rights. A requirement for this Court to issue a writ of mandamus is that no other adequate legal remedy exists. Petitioner is able to

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<sup>32</sup> See *McKeithan v. Beard*, 322 Fed. Appx. 194, 202 (3d. Cir. 2009) (vacating the District Court's grant of summary judgment on prisoner's Eighth Amendment claim based on conditions of confinement. Plaintiff was housed in the Long Term Segregation Unit next to psychotic inmates who smeared themselves with feces and stood at their cell doors and placed feces in air vents.); *LaReau v. MacDougall*, 473 F.2d 974, 976-78 (2d. Cir. 1972) (placing a prisoner in a strip cell for five days where he was subject to near total sensory deprivation violated the Eighth Amendment. The prisoner was in almost total darkness for substantial periods of time and was in total silence. The cell contained no sink, water fountain, or commode. The prisoner was not allowed to have reading materials, except a Bible upon request.).

<sup>33</sup> *Blizzard v. Watson*, 892 F. Supp. 587, 598 (D. Del. 1995) (citing *Wilson v. Seiter*, 501 U.S. 294, 298 (1991)).

pursue his constitutional claims in United States District Court under 42 U.S.C. § 1983.

Additionally, this Court finds that Petitioner failed to establish a clear right to the performance of a non-discretionary legal duty. Inmate classification is discretionary. The ability to earn good-time credit is not a constitutionally-protected right.

**THEREFORE**, Respondents' Motion to Dismiss is hereby **GRANTED**.

**IT IS SO ORDERED.**

/s/ Mary M. Johnston

The Honorable Mary M. Johnston