

July 11, 2002

Sean Prospero
M.P.C.J.F.
P.O. Box 9561
Wilmington, DE 19809

RE: Prospero v. Williams et al.,
C.A. No. 02M-05-014

DATE SUBMITTED: May 31, 2002

Dear Mr. Prospero:

Sean Prospero ("petitioner") has filed a petition seeking a writ of mandamus ("petition") and a motion to proceed in forma pauperis.

Because petitioner is indigent, I grant the motion to proceed in forma pauperis. However, the matter does not proceed merely because I grant this motion. Instead, the Court reviews the petition seeking a writ of mandamus to determine whether the allegations are malicious or are legally or factually frivolous. 10 Del. C. § 8803.

In his petition, petitioner requests that the Court award him "an immediate certification of completion of The Key Program and ... place him at level IV Crest" when the first bed becomes

available. Petitioner asserts that he has been in the Key Program long enough and it is time for him to be allowed out of the program. He contends:

his containment has went above & beyond reason and has and continues to be an arbitrary & wanton violation of the plaintiff's 8th & 14th Amendment Rights, in regards to "Due Process", liberty interest and cruel & unusual punishment.

As the Supreme Court explained in Guy v. Greenhouse, Del. Supr., No. 285, 1993, Walsh, J. (December 30, 1993):

Under Delaware law, the basis for issuance and the scope of relief available through a writ of mandamus under Delaware law are both quite limited. Mandamus is issuable not as a matter of right, but only in the exercise of sound judicial discretion. Moreover, when directed to an administrative agency or public official, mandamus will issue only to require performance of a clear legal or ministerial duty. For a duty to be ministerial and thus enforceable by mandamus, the duty must be prescribed with such precision and certainty that nothing is left to discretion or judgment. [Citations omitted.]

Accord Taylor v. State, 716 A.2d 975 (Del. 1998); Washington v. State, 713 A.2d 932 (Del. 1998). In addition, a writ of mandamus is inappropriate where a petitioner has an adequate remedy at law available to him. Taylor v. State, supra.

Petitioner's sentence of September 20, 2001 imposed in State v. Prospero, Cr. A. No. S00-03-0091, requires him to complete the Key Program before he is released from his ten year Level 5 sentence. There is no duty on respondents for them to release petitioner as a matter of right. Petitioner is not entitled to a writ of mandamus in this situation. Accordingly, I dismiss the petition with prejudice.

IT IS SO ORDERED.

Very truly yours,

T. Henley Graves

cc: Prothonotary's Office
State v. Prospero, Def. ID# 0002013092