

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

LEONTAY T. SMITH, : C.A. No. S16M-01-009 RFS
Petitioner, :
v. :
REBECCA McBRIDE, Central Offender :
Records, STACEY HOLLIS, Classification :
Officer, :
Respondents. :

ORDERS UPON REVIEW OF MOTION TO PROCEED *IN FORMA PAUPERIS*
AND UPON REVIEW OF PETITION FOR WRIT OF MANDAMUS

1) Petitioner Leontay T. Smith (“petitioner”) has filed a motion to proceed *in forma pauperis* and a petition seeking a writ of mandamus (“the petition”) regarding how the Records Unit (“Records”) of the Department of Correction (“DOC”) is running his sentences in the case of *State of Delaware v. Leontay T. Smith*, Def. ID# 1206002919 (“*State v. Smith*”). This is my decision granting the motion to proceed *in forma pauperis* but dismissing the petition with prejudice.

2) Petitioner has established he is indigent, and thus, I GRANT the motion to proceed *in forma pauperis*. However, the granting of that motion does not mean that the action automatically proceeds. Instead, this Court reviews the petition to determine whether it is legally and/or factually frivolous.¹ Because the Court finds the petition to be factually and legally frivolous, it dismisses it.

3) Petitioner was sentenced to the following Level 5 time which is pertinent to this petition in

¹10 *Del. C.* § 8803(b).

the case of *State v. Smith*:²

As to Cr. A. No. S12-12-0640 (burglary 2nd): 8 years at Level 5 with credit for 341 days previously served, suspended after 3 years at Level 5 for 18 months at Level 3 probation

As to Cr. A. No. S12-06-0596 (burglary 2nd): 8 years at Level 5, suspended after 5 years at Level 5 and upon successful completion at Level 5 Key, the balance is suspended for 1 year at Level 4, Residential Substance Abuse Treatment Program (“RSATP”), and upon successful completion of the Level 4, RSATP, the balance is suspended for 18 months at Level 3 probation

As to Cr. A. No. S12-12-0642 (burglary 2nd): 8 years at Level 5 suspended after 2 years at Level 5 for 18 months at Level 3 probation

As to Cr. A. No. S12-12-0648 (burglary 2nd): 8 years at Level 5 suspended after 1 year at Level 5 for 18 months at Level 3 probation

Although the Court listed the Level 5 time in the sequence noted above, it did not specify what sentence was to be served in what order. Records is responsible for placing the sentences in the appropriate sequence in order to effect the intent of the sentencing order and to comply with the appropriate statutes, rules and regulations.

4) An attachment to defendant’s petition shows that Records is running the sentences as follows: Cr. A. No. S12-12-0640 is first; followed by Cr. A. No. S12-12-0642; followed by Cr. A. No. S12-12-0648; followed by Cr. A. No. S12–06-0596. As Records explains, the sentence in Cr. A. No. S12-06-0596 must run last because it has the treatment program requirement in it. A defendant is not considered eligible for the treatment program until he or she has approximately 30 months remaining on his or her minimum Level 5 time. The treatment program is designed so that defendant completes a portion of it during the Level 5 period and then completes the remaining portion while at

²He received other sentences which were suspended for probation, but those sentences are irrelevant to the pending motion.

Level 4. It would be illogical and a waste of resources to have defendant undergo the Level 5 portion of the treatment program towards the front end of his Level 5 time.

5) Petitioner argues that Records is running his sentences in contravention of the sentencing order and he requests this Court to correct this “error” by issuing a writ of mandamus.

6) As the Supreme Court has explained:

A writ of mandamus is a command that may be issued by the Superior Court to an inferior court, public official or agency to compel the performance of a duty to which the petitioner has established a clear legal right. The petitioner must also establish that there has been an arbitrary refusal or failure to act and there is no other adequate remedy available. Ultimately, the issuance of such a writ is within the discretion of the Superior Court.³

7) Records is running the sentences correctly. In particular, the sentence in Cr. A. No. S12-06-0596 must be served last so that defendant will receive treatment at the appropriate time: close to his release from Level 5. Records’ actions are proper, and petitioner has no right to the requested remedy he seeks.

8) Petitioner’s petition is legally and factually meritless. Consequently, the Court dismisses it with prejudice.

IT IS SO ORDERED THIS 3RD DAY OF FEBRUARY, 2016.

/s/ Richard F. Stokes

JUDGE

cc: Prothonotary’s Office
Leontay Smith
Stuart B. Drowos, Esquire
Gregory E. Smith, Esquire
Rebecca McBride

³*Winward v. Taylor*, 788 A.2d 133, 2001 WL 1636748, *1 (Del. Dec. 12, 2001) (footnotes and citations omitted).

Stacey Hollis