

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE
IN AND FOR SUSSEX COUNTY

DAVID E. DOWNER : C.A. No. 05M-08-004
v. :
RAPHEAL WILLIAMS, :
DARLENE BRUSTMAN, :
STAN TAYLOR, :
STATE OF DELAWARE :

ORDER REVIEWING MOTION TO PROCEED IN FORMA PAUPERIS
AND UPON REVIEW OF PETITION SEEKING A WRIT OF MANDAMUS

David E. Downer (“petitioner”) has filed a petition seeking the issuance of a writ of mandamus (“petition”) and a motion to proceed in forma pauperis. This is my decision granting the motion to proceed in forma pauperis but dismissing the petition as legally frivolous.

Petitioner is indigent. He is entitled to proceed in forma pauperis. However, the matter does not end there. Instead, the Court reviews the petition to determine if the case should proceed. 10 Del. C. § 8803. The case is allowed to proceed only if the petition is not legally or factually frivolous.

In order to address the petition, it is necessary to review the sentencing order entered in the cases of State v. Downer, Def. ID#s 0104018681 and 0209018045. Defendant had been sentenced in these cases. When he was violated on probation, one sentencing order was entered with regard to both cases. He was discharged as unimproved in the case of State v. Downer, Def.

ID# 0104018681. With regard to the driving under the influence conviction in State v. Downer,

Def. ID# 0209018045, defendant was sentenced as follows:

- The defendant is placed in the custody of the Department of Correction for 4 year(s) at supervision level 5 with credit for 18 month(s) previously served

- Upon successful completion at supervision level 5 **KEY**

- Balance of sentence is suspended for 9 month(s) supervision level 4,
RESIDENTIAL SUBS. ABUSE TREATMENT

_____ **-Upon successful completion at supervision level 4 RESIDENTIAL SUBS.
ABUSE TREATMENT PRG.**

_____ - Balance of sentence is suspended for 1 year(s) supervision level 3
AFTERCARE

- Hold at supervision level 5

- Until space is available at supervision level 4, **RESIDENTIAL SUBS. ABUSE
TREATMENT PRG.**

This sentence is the current sentence which petitioner is serving.¹ Petitioner completed the Key Program. Before he completed it, his good time release date from Level 5 was October 20, 2005. Once he completed it, he was moved to Level 4, Residential Substance Abuse Treatment Program. The start date for the Level 4 portion of his sentence is June 30, 2005. This nine month Level 4 sentence ends on March 29, 2006. With good time credits, his release date from Level 4 is March 2, 2006.

Petitioner has filed this mandamus, arguing that the prison illegally moved his release date to March 2, 2006. He maintains he should be released on September 4, 2005, because that is when the Level 5 portion of his sentence ends. His contention is that the Court intended him to be incarcerated for a total of four years and that time will be up on September 4, 2005.

¹The Court corrected the original violation of probation sentence in order to give petitioner eighteen (18) months credit time previously served.

As explained in Taylor v. State, 716 A.2d 975 (Del. 1998):

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 petition has established a legal right. [Citation omitted.] ...

... [A] writ of mandamus also is inappropriate under the circumstances because ... [petitioner] has an adequate remedy at law available to him.

Petitioner does not understand the sentencing order and the difference in Level 5 and Level 4 time. Level 4 time is not Level 5 time. The balance of his Level 5 time has been suspended according to the sentencing order so that petitioner might undergo the Level 4, Residential Substance Abuse Treatment Program. The prison officials have followed the dictates of the sentencing order. They have fulfilled their duty. Petitioner has no right to an order instructing he be released earlier. In addition, petitioner has another remedy: to seek a modification of his sentencing order.

For the foregoing reasons, I dismiss petitioner's petition seeking a writ of mandamus.

IT IS SO ORDERED THIS 23RD DAY OF AUGUST, 2005.

JUDGE

cc: Prothonotary's Office
David E. Downer
Ophelia Waters, DAG
State v. Downer, Def. ID#s 0104018681 and 0209018045