

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

FRANCISCO RODRIGUEZ, : C.A. No. 07M-08-015  
Petitioner, :  
v. :  
COMMISSIONER CARL DANBERG, :  
BUREAU CHIEF RICHARD KEARNEY, :  
WARDEN RAPHAEL WILLIAMS, :  
RECORDS SUPERVISOR CATHY PAYNE, :  
Respondents. :

ORDERS GRANTING MOTION TO PROCEED *IN FORMA PAUPERIS*  
AND DISMISSING PETITION SEEKING WRIT OF MANDAMUS

1) Pending before the Court are a petition seeking a writ of mandamus and a motion to proceed *in forma pauperis* which petitioner Francisco Rodriguez (“petitioner”)<sup>1</sup> has filed with this Court.

2) Petitioner is indigent; thus, I grant his motion to proceed *in forma pauperis*.

3) This Court also must review the petition seeking a writ of mandamus in connection with the review of the motion to proceed *in forma pauperis*. 10 Del. C. § 8803. This review shows that the petition seeking a writ of mandamus is legally meritless.

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<sup>1</sup>Petitioner’s pleadings show he also has used the names Roberto Rodriquez and Roberto Zavala-Ortiz.

4) In his petition, petitioner alleges that he is serving two criminal sentences entered by the Superior Court. The first case, which is in the Sussex County Superior Court, is State of Delaware v. Roberto Zavala-Ortiz, Def. ID# 0206002764. The other case, which is in New Castle County Superior Court, is State of Delaware v. Roberto Rodriguez, Def. ID# 0206003099. A review of the sentences in the respective cases, of which this Court takes judicial notice, establishes that petitioner was sentenced to mandatory periods of Level 5 and also to periods of Level 5 which were suspended for periods of probation.<sup>2</sup>

5) The suspended portions of his Level 5 sentences are at the crux of the pending petition. Petitioner explains that the Immigration and Naturalization Service (“INS”) has lodged a detainer to deport him out of the United States of America; consequently, he will have to serve all of his time at Level 5.<sup>3</sup> He alleges he is not able “to sign an agreement to return from as offenders with State Detainers so often file.” He also alleges:

3. The purpose of Level IV “quasi incarceration” is for adequate transition back

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<sup>2</sup>In State v. Zavala-Ortiz, Def. ID# 0206002764, defendant was sentenced on two counts on January 10, 2003. As to the possession of a firearm during the commission of a felony conviction, he was sentenced to a mandatory term of three (3) years at Level 5, with credit for 220 days previously served. As to the carjacking in the first degree conviction, he was sentenced to five (5) years at Level 5, and after serving a mandatory two (2) years and completing the Key North Program at Gander Hill, the balance was suspended for nine (9) months at Level 4, Residential Substance Abuse Treatment Program, and upon completion of the Level 4, Residential Substance Abuse Treatment Program, the balance was suspended for 27 months Level 3 Aftercare.

In State v. Rodriguez, Def. ID# 0206003099, he was sentenced on March 28, 2003, on two counts of conspiracy in the second degree. As to the first conspiracy in the second degree, he was sentenced to two (2) years at Level 5, suspended after serving one (1) year at Level 5 for one (1) year at Level 4, Work Release. As to the second conspiracy in the second degree, he was sentenced to two (2) years at Level 5, suspended immediately for two (2) years at Level 2.

<sup>3</sup>Petitioner moved for modifications of his sentences, and those motions were denied. He has appealed both denials to the Delaware Supreme Court.

into society. In the petitioner's case, due to the immigration detainer, he doesn't need help with reintegration due to the fact that he could possibly be deported.

Petitioner alleges that as of July 11, 2007, he had served that portion of his Level 5 time which was **not** subject to suspension for Level 4. He then alleges:

5. \*\*\* In such cases when offenders have state detainers, the offender is given the opportunity to sign an Agreement to Return Form, go deal with the detainer and then return when the detainer has been take care of to serve the level IV sentence. In the petitioner's case, he maybe deported by the Department of Homeland Security, Immigration Naturalization Service.

6. Which brings me to the dilemma in this case, Mr. Rodriguez was sentenced to 1 year and 9 months of Level IV supervision. Unable to go to Level IV Mr. Rodriguez will be forced to serve an additional 21 months at Level V. Clearly at the day of sentence that was not Judge Bradley's intent.

**THE QUESTION TO THE COURT IS:**

1. As a matter of Due Process and Equal Protection, do offenders with Immigration Detainers have the right to sign an agreement to return form as afforded offenders with Detainers from other states?

**WHEREFORE**, petitioner prays that this Court issue a Writ of Mandamus to the Department of Corrections verifying that offenders with INS Detainers have the right to sign the agreement to return form.

6) As the Supreme Court explained in Guy v. Greenhouse, Del. Supr., No. 285, 1993, Walsh, J. (Dec. 30, 1993) at 1-2:

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. Ingersoll v. Rollins Broadcasting of Del., Inc., Del. Supr., 272 A.2d 336, 338 (1970). Moreover, when directed to an administrative agency or public official, mandamus will issue only to require performance of a clear legal or ministerial duty. Capital Educators Association v. Camper, Del. Ch., 320 A.2d 782, 786 (1974). 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. Darby v. New Castle Gunning Bedford Educational Association, Del. Supr., 336 A.2d 209, 211 (1975).

Petitioner has not set forth a legal or ministerial duty requiring that the respondents in this

case provide offenders with INS Detainers the right to sign the agreement to return form. In fact, no such legal or ministerial duty exists.<sup>4</sup> Thus, petitioner is not entitled to a writ of mandamus. Petitioner's true complaint is that he must serve all of his Level 5 sentence because of the INS detainer. He has a remedy at law for that complaint; he may seek sentence modifications in his criminal cases.<sup>5</sup> The fact a legal remedy exists also prevents him from obtaining a writ of mandamus. In re Bordley, 545 A.2d 619, 620 (Del. 1988).

6) For the foregoing reasons, the petition seeking a writ of mandamus is DISMISSED as legally meritless.

IT IS SO ORDERED.

/s/ T. Henley Graves

JUDGE

cc: Prothonotary's Office  
Francisco Rodriguez  
Ophelia Waters, DAG  
Aaron Goldstein, DAG  
Sharon Agnew, NCC Prothonotary  
Cathy Howard, Clerk, Supreme Court  
State of Delaware v. Roberto Zavala-Ortiz, Def. ID# 0206002764 (Sussex)  
State of Delaware v. Roberto Rodriguez, Def. ID# 0206003099 (NCC)

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<sup>4</sup>Petitioner's situation completely differs from the situation of those Delaware inmates wanted by another state. If petitioner were deported, he would not be allowed to return to complete his sentences. Those inmates who sign the agreement to return form must return to Delaware to complete their sentences. Thus, he would have an advantage over those inmates should he be deported in that he would not have to completely serve his sentences.

<sup>5</sup>The Court is aware that he previously filed such a motion in his cases; the motions were denied; and he has appealed the denials to the Supreme Court.