

IN THE SUPREME COURT OF THE STATE OF DELAWARE

WILLIAM T. SMITH, III,	§
	§
Petitioner Below-	§ No. 628, 2002
Appellant,	§
	§
v.	§ Court Below—Superior Court
	§ of the State of Delaware,
STAN TAYLOR, DOC	§ in and for New Castle County
Commissioner, REBECCA	§ C.A. No. 02M-06-55
McBRIDE, DCC Records	§
Supervisor, MARLENE	§
LICHTENSTADTER, Chair, Board	§
of Parole, M. JANE BRADY,	§
Attorney General,	§
	§
Respondents Below-	§
Appellees.	§

Submitted: January 9, 2003
Decided: February 4, 2003

Before **VEASEY**, Chief Justice, **WALSH** and **HOLLAND**, Justices

ORDER

This 4th day of February 2003, upon consideration of the appellant's opening brief and the appellee's motion to affirm pursuant to Supreme Court Rule 25(a), it appears to the Court that:

(1) The petitioner-appellant, William T. Smith, III, filed an appeal from the Superior Court's October 9, 2002 order dismissing his petition for a writ of mandamus. The State of Delaware, as the real party in interest, has

moved to affirm the judgment of the Superior Court on the ground that it is manifest on the face of Smith's opening brief that the appeal is without merit.¹

We agree and AFFIRM.

(2) In 1987, Smith was convicted of Trafficking in Cocaine and was sentenced to 15 years incarceration at Level V, to be suspended after 5 years for 10 years of probation. In 1989, Smith was convicted of another charge of Trafficking in Cocaine and was sentenced to a 3-year mandatory term of incarceration at Level V. Smith was also convicted at the same time of Possession with Intent to Deliver and Conspiracy. He was sentenced on the possession conviction to 30 years incarceration at Level V, to be suspended after 25 years for 5 years at Level II, with the first 15 years being a mandatory term of incarceration. He was sentenced on the conspiracy conviction to 7 years incarceration at Level V, to be suspended for 7 years of probation. In 2001, the Superior Court modified Smith's sentence on his possession conviction to a non-mandatory 25-year term at Level V.

(3) In June 2002, Smith filed a petition for a writ of mandamus in which he claimed that he was entitled to more good time credits than the Department of Correction had given him and that, pursuant to a January 2001

¹SUPR. CT. R. 25(a).

Superior Court order, he should be released on parole immediately. The Superior Court dismissed Smith's petition on the basis that he had failed to state a claim upon which relief may be granted.²

(4) In this appeal, Smith claims that: a) the Superior Court abused its discretion by not addressing his motion to extend the time for responding to the State of Delaware's motion to dismiss; b) the Superior Court abused its discretion when it accepted the affidavit of a prison official outlining his good time credits; c) the Superior Court abused its discretion in imposing its 25-year sentence on the possession conviction; and d) the Board of Parole based its denial of parole on inaccurate information from prison officials.

(5) 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.³ In its decision, the Superior Court found no basis upon which to disbelieve the affidavit of a prison official outlining Smith's good time credits and found no factual support for Smith's assertion that in January 2001 the Superior Court had ordered his immediate release on parole. Because Smith

²SUPER. CT. CIV. R. 12(b) (6).

³*Clough v. State*, 686 A.2d 158, 159 (Del. 1996).

had not shown a clear legal right to the performance of a duty by the Department of Corrections and had not shown that he was entitled to immediate release, the Superior Court was within its discretion to dismiss Smith's petition for a writ of mandamus. Moreover, even though the Superior Court did not rule on Smith's motion for an extension of time, it, nevertheless, noted in its decision that it had considered Smith's untimely response to the State's motion to dismiss, rendering any error harmless.

(6) It is manifest on the face of Smith's opening brief that the appeal is without merit because the issues presented on appeal are controlled by settled Delaware law and, to the extent judicial discretion is implicated, clearly there was no abuse of discretion.

NOW, THEREFORE, IT IS ORDERED that, pursuant to Supreme Court Rule 25(a), the State of Delaware's motion to affirm is GRANTED. The judgment of the Superior Court is AFFIRMED.

BY THE COURT:

/s/ E. Norman Veasey
Chief Justice