

IN THE SUPREME COURT OF THE STATE OF DELAWARE

IN THE MATTER OF THE §
PETITION OF STEVE A. § No. 163, 2008
HICKMAN FOR A WRIT OF §
MANDAMUS §

Submitted: April 14, 2008

Decided: April 30, 2008

Before **STEELE**, Chief Justice, **JACOBS** and **RIDGELY**, Justices

ORDER

This 30th day of April 2008, it appears to the Court that:

(1) The petitioner, Steve A. Hickman, seeks to invoke this Court's original jurisdiction to issue an extraordinary writ of mandamus¹ to compel the Superior Court to vacate his amended sentence for a violation of probation ("VOP") in Criminal I.D. No. 0506026294. The State of Delaware has filed an answer and a motion to dismiss the petition. We find that Hickman's petition manifestly fails to invoke this Court's original jurisdiction. Accordingly, the petition must be dismissed.

(2) In October 2005, Hickman was charged with Trafficking in Controlled Substances and two counts of Possession with Intent to Deliver Controlled Substances in Criminal I.D. No. 0506026294. In February 2006, he pleaded guilty to and was sentenced for one count of Possession with Intent to

¹ Del. Const. art. IV, § 11(6); Supr. Ct. R. 43.

Deliver Controlled Substances. On December 10, 2007, Hickman was found to have committed a VOP in connection with that sentence and also pleaded guilty to a separate charge of Maintaining a Vehicle for the Keeping of Controlled Substances in Criminal I.D. No. 0707027650. The record reflects that Hickman was sentenced in both cases on that same date. The record also reflects that, on March 19, 2008, the VOP sentence was corrected to conform to Hickman's December 10, 2007 plea agreement. Hickman did not file an appeal from the Superior Court's corrected VOP sentencing order.

(3) In his petition for a writ of mandamus, Hickman claims that the Superior Court did not have the authority to correct his VOP sentence under the time limitations of Superior Court Criminal Rule 35 and, therefore, the sentence should be vacated and he should be released forthwith from the VOP Center in Georgetown, Delaware.

(4) A writ of mandamus is an extraordinary remedy issued by this Court to compel a trial court to perform a duty.² As a condition precedent to the issuance of the writ, Hickman must demonstrate that: he has a clear right to the performance of the duty; no other adequate remedy is available; and the trial court has arbitrarily failed or refused to perform its duty.³ A writ of mandamus is not

² *In re Bordley*, 545 A.2d 619, 620 (Del. 1988).

³ *Id.*

available to correct alleged trial court errors that are, or were, subject to ordinary appellate review.⁴

(5) Hickman has failed to demonstrate that the Superior Court has arbitrarily failed or refused to perform a duty owed to him. Moreover, he failed to file an appeal from the Superior Court's VOP sentencing order. This Court will not allow Hickman, who had an adequate remedy in the ordinary appeal process, to invoke the extraordinary writ process as a substitute for appellate review.

NOW, THEREFORE, IT IS ORDERED that the State of Delaware's motion to dismiss is GRANTED. The petition for a writ of mandamus is DISMISSED.

BY THE COURT:

/s/Henry duPont Ridgely
Justice

⁴ *Matushefske v. Herlihy*, 214 A.2d 883, 885 (Del. 1965).