

IN THE SUPREME COURT OF THE STATE OF DELAWARE

IN THE MATTER OF THE §
PETITION OF JAMES A. WILSON § No. 607, 2009
FOR A WRIT OF MANDAMUS §

Submitted: October 28, 2009
Decided: November 4, 2009

Before **BERGER, JACOBS** and **RIDGELY**, Justices.

ORDER

This 4th day of November 2009, upon consideration of the petition for a writ of mandamus filed by James A. Wilson and the State’s answer and motion to dismiss, it appears to the Court that:

(1) In July 2000, in the Superior Court in Kent County, Wilson pled guilty and was sentenced on charges of Harassment and Possession of a Firearm by a Person Prohibited.¹ In September 2001, following a Superior Court jury trial in New Castle County, Wilson was convicted and sentenced on charges of Trafficking in Cocaine and related offenses.²

(2) On April 6, 2009, Wilson, through counsel, filed a “motion for modification and/or review of sentence” captioned in the Superior Court in Kent County. The motion, which referenced both the Kent County and New Castle County Superior Court case numbers, appears on the respective court

¹ *State v. Wilson*, Del. Super., Cr. ID No. 9911012318, Witham, J. (July 18, 2000) (sentencing).

² *State v. Wilson*, Del. Super., Cr. ID No. 9912006359, Cooch, J. (Sept. 7, 2001) (sentencing).

dockets in both Kent County and New Castle County. The motion seeks “review” of Wilson’s “sentence” on the basis that Wilson “has completed [the] Level V portion of his sentence.”³

(3) By order dated October 1, 2009, the Superior Court in Kent County denied the part of the sentence modification motion that concerned the sentence imposed in Kent County in July 2000.⁴ The Superior Court in Kent County did not rule on the part of the sentence modification motion that concerned the sentence imposed by the Superior Court in New Castle County in September 2001.

(4) In his *pro se* petition for a writ of mandamus in this Court, Wilson asks this Court to order the Superior Court in Kent County to rule on the part of his sentence modification motion that concerned the sentence imposed by the Superior Court in New Castle County in September 2001. There is no basis for the issuance of a writ of mandamus.

(5) A writ of mandamus is an extraordinary remedy issued by this Court to compel a trial court to perform a duty.⁵ As a condition precedent to the issuance of the writ, the petitioner must demonstrate that (a) he has a clear right to the performance of a duty; (b) no other adequate remedy is

³ A copy of the motion is attached to Wilson’s mandamus petition.

⁴ A copy of the order is attached to Wilson’s mandamus petition. It appears that Wilson has filed a *pro se* appeal from the order. *Wilson v. State*, Del. Supr., No. 614, 2009.

⁵ *In re Bordley*, 545 A.2d 619, 620 (Del. 1988).

available; and (c) the trial court has arbitrarily failed or refused to perform its duty.⁶ In this case, Wilson has not demonstrated that the Superior Court in Kent County has arbitrarily failed or refused to perform a duty owed to him.⁷

NOW, THEREFORE, IT IS HEREBY ORDERED that the petition for a writ of mandamus is DISMISSED.

BY THE COURT:

/s/ Jack B. Jacobs
Justice

⁶ *Id.*

⁷ Although it is not clear that the Superior Court in New Castle County ruled on Wilson's April 2009 motion for modification of sentence, it appears from the docket that the Superior Court in New Castle County denied Wilson's July 2009 habeas corpus petition on July 16, 2009, his July 2009 motion for correction of sentence and August 2009 motion for modification of sentence on August 28, 2009, and his October 2009 motion for correction of an illegal sentence on October 23, 2009.