

IN THE SUPREME COURT OF THE STATE OF DELAWARE

IN THE MATTER OF THE §
PETITION OF LAWRENCE § No. 386, 2003
WHALEN FOR A WRIT OF §
MANDAMUS. § Def. ID No. 9809020033

Submitted: August 20, 2003
Decided: October 7, 2003

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

ORDER

This 7th day of October 2003, upon consideration of the petition for a writ of mandamus filed by Lawrence Whalen and the answer and motion to dismiss filed by the State of Delaware, it appears to the Court that:

(1) In November 1995, Lawrence Whalen pled guilty to one count of Unlawful Sexual Intercourse in the Second Degree. Whalen was sentenced to fifteen years of imprisonment, suspended after ten years, for five years of probation.¹ In May 1999, Whalen pled *nolo contendere* to five counts of Unlawful Sexual Contact in the Third Degree. Whalen was immediately sentenced to five years of imprisonment, suspended after one year of imprisonment, for four years of probation.² The 1999 plea agreement provided that Whalen was to undergo sexual disorder counseling immediately upon release.

¹*State v. Whalen*, Del. Super., No. 9506011067, Lee, J. (Nov. 15, 1995).

²*State v. Whalen*, Del. Super., No. 9809020033, Stokes, J. (May 7, 1999).

(2) Whalen seeks the issuance of a writ of mandamus directed to the Superior Court “to review the [1999] plea agreement and [2001] postconviction relief opinion.” Ultimately, Whalen seeks to compel the Department of Correction to cease its efforts to put him into sex offender treatment. According to Whalen, the Department of Correction’s efforts to put him into sex offender treatment violates the 1999 plea agreement that provided that Whalen would undergo sexual disorder counseling immediately upon release.

(3) This Court has the authority to issue a writ of mandamus only when the petitioner can demonstrate a clear right to the performance of a duty, no other adequate remedy is available, and the trial court arbitrarily has filed or refused to perform its duty.³ “[I]n the absence of a clear showing of an arbitrary refusal or failure to act, this Court will not issue a writ of mandamus to compel a trial court to perform a particular judicial function, to decide a matter in a particular way, or to dictate the control of its docket.”⁴

³*In re Bordley*, 545 A.2d 619, 620 (Del. 1988).

⁴*Id.*

(4) Whalen is not entitled to the issuance of a writ of mandamus. First, Whalen cannot use the writ to seek review of a Superior Court decision that denied him relief where, as here, the denial was reviewed through ordinary appellate proceedings.⁵ Second, this Court is without jurisdiction to issue a writ of mandamus to the Department of Correction.⁶

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

BY THE COURT:

/s/ Myron T. Steele
Justice

⁵*Matushefske v. Herlihy*, 214 A.2d 883 (1965). The Superior Court's November 28, 2001 denial of postconviction relief was affirmed on appeal. *Whalen v. State*, 2003 WL 1572126 (Del. Supr.).

⁶Del. Const. art. IV, § 11(6); *In re Hitchens*, 600 A.2d 37, 38 (Del. 1991).