

IN THE SUPREME COURT OF THE STATE OF DELAWARE

IN THE MATTER OF THE §
PETITION OF GEARL T. § No. 323, 2010
FLOWERS FOR A WRIT OF §
MANDAMUS §

Submitted: June 22, 2010
Decided: August 11, 2010

Before **STEELE**, Chief Justice, **HOLLAND** and **BERGER**, Justices.

ORDER

This 11th day of August 2010, upon consideration of the petition of Gearl T. Flowers for an extraordinary writ of mandamus, it appears to the Court that:

(1) The petitioner, Gearl Flowers, seeks to invoke the original jurisdiction of this Court to issue a writ of mandamus to compel the Superior Court to credit his sentence for twenty-three days he previously served at Level V incarceration. The State of Delaware has filed a response and motion to dismiss Flowers's petition. Without addressing the merits of Flowers' argument, we find that his petition manifestly fails to invoke the original jurisdiction of this Court. Accordingly, the petition must be dismissed.

(2) The Superior Court docket in Flowers' criminal case reflects that he pled guilty in November 2009 to Attempted Theft and Criminal

Trespass in the Second Degree. On the criminal trespass charge, Flowers was sentenced to serve thirteen days at Level V incarceration. For Attempted Theft, the Superior Court sentenced Flowers to one year at Level V incarceration to be suspended immediately for one year at Level III probation. Flowers did not appeal. In February and March 2010, Flowers was charged with several violations of probation. After a hearing, the Superior Court found Flowers in violation and sentenced him to one year at Level V incarceration to be suspended after serving 120 days with no probation to follow. Flowers did not appeal.

(3) Instead, he filed several unsuccessful motions for modification of sentence, arguing that the Superior Court failed to properly credit him with twenty-three days he already served at Level V. In rejecting Flowers' contention, the Superior Court noted that the 120 day VOP sentence was significantly less than the sentence the Superior Court could have imposed and that it was the Superior Court's intention that Flowers serve 120 days at Level V over and above any time he had already served. Flowers did not appeal any of the Superior Court's denials of his motions for modification of sentence. Instead, he filed this writ requesting that the Superior Court give him credit for twenty-three days previously served.

(4) This Court has 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 failed or refused to perform its duty.¹ An extraordinary writ will not be issued if the petitioner has another adequate and complete remedy at law to correct the act of the trial court that is alleged to be erroneous.² In this case, Flowers had an adequate remedy in the appeal process to seek review of the Superior Court's denial of his motions for credit time.³ More importantly, however, Flowers cannot establish that he has a clear right to twenty-three days credit he seeks. Accordingly, we conclude that Flowers' petition fails to invoke this Court's original jurisdiction to issue an extraordinary writ.

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

BY THE COURT:

/s/ Randy J. Holland
Justice

¹ *In re Bordley*, 545 A.2d 619, 620 (Del. 1988).

² *Canaday v. Superior Court*, 116 A.2d 678, 682 (Del. 1955).

³ *In re Hitchens*, 600 A.2d 37, 38 (Del. 1991).