

IN THE SUPREME COURT OF THE STATE OF DELAWARE

IN THE MATTER OF THE §
PETITION OF FREDERICK § No. 559, 2010
BROWN FOR A WRIT OF §
MANDAMUS §

Submitted: September 10, 2010

Decided: October 1, 2010

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

ORDER

This 1st day of October 2010, it appears to the Court that:

(1) The petitioner, Frederick Brown, an incarcerated individual, seeks to invoke this Court's original jurisdiction to issue an extraordinary writ of mandamus¹ to compel the Superior Court to vacate its order sentencing him for a violation of probation, return him to Level III probation, and credit him with Level V time served. The State of Delaware has filed an answer requesting that Brown's petition be dismissed. We find that Brown's petition manifestly fails to invoke the original jurisdiction of this Court. Accordingly, the petition must be dismissed.

(2) The record reflects that, in March 2000, Brown was indicted on the charge of Rape in the First Degree. In July 2000, Brown pleaded guilty to the lesser-included offense of Rape in the Second Degree. He was

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

sentenced to 20 years of Level V incarceration, to be suspended after 10 years for decreasing levels of supervision. Brown did not file a direct appeal of his conviction. In April 2010, Brown was found to have committed a violation of probation (“VOP”). His probation was revoked and he was re-sentenced to 10 years at Level V. Brown has filed an appeal from his VOP sentence (Supr. Ct. No. 235, 2010).

(3) 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, the petitioner must demonstrate that a) he has a clear right to the performance of the duty; b) no other adequate remedy is available; and c) the trial court has arbitrarily failed or refused to perform its duty.³

(4) There is no basis for the issuance of a writ of mandamus in this case. The record reflects that, upon a finding of a VOP, the Superior Court re-sentenced Brown to the remainder of his original Level V sentence. The sentence was within the Superior Court’s discretion to impose.⁴ Moreover, Brown has filed an appeal from the Superior Court’s VOP sentence. As such, he has another adequate remedy available to him.

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

³ *Id.*

⁴ Del. Code Ann. tit. 11, §4334(c).

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

BY THE COURT:

Jack B. Jacobs
Justice