

IN THE SUPREME COURT OF THE STATE OF DELAWARE

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|-----------------------------|------------------------------|
| JAMES WILSON, NORMAN | § |
| MILLER, BARRY DIXON, SAM | § No. 525, 2010 |
| JONES, RONELL MORRIS, | § |
| JAMAH GROSVENOR, ANDRAE | § |
| MANDEL, and BRYAN EVANS, | § Court Below—Superior Court |
| | § of the State of Delaware |
| Plaintiffs Below- | § in and for Sussex County |
| Appellants, | § C.A. No. S10M-04-025 |
| | § |
| v. | § |
| | § |
| CARL DANBERG, BEAU BIDEN, | § |
| MIKE DELOY, BARRY BILES, L. | § |
| MUNIZ, TIM WEST, MARTIN | § |
| BURTON, CURT ROGERS, and K. | § |
| WEST, | § |
| | § |
| Defendants Below- | § |
| Appellees. | § |

Submitted: September 3, 2010

Decided: October 11, 2010

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

ORDER

This 11th day of October 2010, upon consideration of the appellant's opening brief and the appellees' motion to affirm pursuant to Supreme Court Rule 25(a), it appears to the Court that:

(1) The plaintiff-appellant, James Wilson, an incarcerated individual, filed an appeal from the Superior Court's August 5, 2010 order

denying his petition for a writ of mandamus.¹ The State of Delaware has filed a motion to affirm the Superior Court's judgment on the ground that it is manifest on the face of the opening brief that the appeal is without merit.² We agree and affirm.

(2) The record reflects that Wilson filed a complaint in the Superior Court alleging that a non-party inmate was assaulted by prison guards. Following the alleged assault, grievances were filed and requests sent to prison officials asking that the guards be transferred to another facility. The complaint requested that the Attorney General file charges against the guards who committed the alleged assault, that charges be filed against prison officials for failing to file charges against the guards and respond to the inmates' grievances, and that an injunction prohibiting the guards from violating the inmates' constitutional rights be issued. The Superior Court subsequently dismissed the complaint, which it construed as a petition for a writ of mandamus.

(3) In this appeal, Wilson claims that the Superior Court erred and abused its discretion when it dismissed his complaint and when it denied his request to amend his complaint to add a retaliation claim.

¹ It appears that Wilson is the only plaintiff participating in the appeal.

² Supr. Ct. R. 25(a).

(4) A writ of mandamus is an extraordinary remedy issued by the Superior Court to compel an administrative agency or public official to perform a duty.³ 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 agency or official has arbitrarily failed or refused to perform the duty.⁴ Mandamus will not issue to compel an agency or official to perform a discretionary act.⁵

(5) We conclude, given the claims and requests for relief asserted in the complaint, that the Superior Court properly construed it as a petition for a writ of mandamus. Moreover, we conclude that the Superior Court properly denied the petition for failing to demonstrate that mandamus relief was warranted, given that it sought to compel the performance of discretionary acts by public officials. Finally, we conclude that the Superior Court acted within its discretion in denying Wilson's request to amend the complaint to add a retaliation claim.

(6) It is manifest on the face of the opening brief that this appeal is without merit because the issues presented on appeal are controlled by

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

⁴ *Id.*

⁵ *Guy v. Greenhouse*, Del. Supr., No. 285, 1993, Walsh, J. (Dec. 30, 1993) (citing *Capital Educ. Assn. v. Camper*, 320 A.2d 782, 786 (Del. Ch. 1974) and *Darby v. New Castle Gunning Bedford Educ. Assn.*, 336 A.2d 209, 211 (Del. 1975)).

settled Delaware law and, to the extent that judicial discretion is implicated, there was no abuse of discretion.

NOW, THEREFORE, IT IS ORDERED that the State's motion to affirm is GRANTED. The judgment of the Superior Court is AFFIRMED.⁶

BY THE COURT:

/s/ Henry duPont Ridgely
Justice

⁶ Plaintiff-appellant's motion to proceed *in forma pauperis* is hereby denied as moot.