

IN THE SUPREME COURT OF THE STATE OF DELAWARE

VASSAR L. LYONS,	§	
	§	No. 698, 2002
Petitioner Below,	§	
Appellant,	§	Court Below–Superior Court of
	§	the State of Delaware, in and
v.	§	for New Castle County in C.A.
	§	No. 02M-10-093.
THOMAS L. CARROLL and the	§	
DEPARTMENT OF CORRECTION,	§	
	§	
Respondents Below,	§	
Appellees.	§	

Submitted: June 19, 2003

Decided: July 7, 2003

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

ORDER

This 7th day of July 2003, upon consideration of the appellant’s opening brief and the appellee’s motion to affirm pursuant to Supreme Court Rule 25(a), it appears to the Court that:

(1) The petitioner-appellant, Vassar L. Lyons, filed an appeal from the Superior Court’s order of October 28, 2002, that dismissed his petition for a writ of mandamus. The State of Delaware has moved to affirm the judgment of the Superior Court on the ground that it is manifest on the face of Lyons’ opening brief that the appeal is without merit. We agree and **AFFIRM**.

(2) In 2001, Lyons pleaded guilty to two counts of Possession of a Firearm During the Commission of a Felony, one count of Robbery in the First Degree, and two counts of Robbery in the Second Degree. Lyons was sentenced on February 1, 2002, to ten years at Level V, suspended after eight years, for two years at Level II.

(3) In an addendum to the sentencing order, the Superior Court provided that it “did not oppose [Lyons] serving both Level 5 time and probation in the State of Virginia.”¹ By decision dated July 23, 2002, the Department of Correction’s Institutional Release Classification Board (IRCB) approved Lyons’ request for an interstate transfer.²

(4) In October 2002, Lyons filed a petition for a writ of mandamus in the Superior Court. Lyons complained that the Department of Correction had failed, or refused, to follow through on the IRCB’s July 23 decision that had approved his request for an interstate transfer. By order dated October 28, 2002, the Superior Court dismissed Lyons’ petition on the basis that he had no right to serve his prison term in another state. This appeal followed.

(5) Lyons is mistaken that the Department of Correction has refused to comply with the IRCB’s July 23 decision approving Lyons’ request for an interstate

¹*State v. Lyons*, Del. Super., Cr.A. Nos. IN01-01-2419, Babiarz, J. (Feb. 1, 2002).

²*See* Del. Code Ann. tit. 11, § 6571 (2001) (setting forth the terms of the Interstate Corrections Compact).

transfer. To the contrary, it appears that the Department of Correction has submitted Lyons' application for transfer to correctional authorities in Virginia. At the present time, Delaware authorities are waiting for a response from Virginia officials.³

(6) A writ of mandamus is a command that may be issued by the Superior Court to an inferior court, public official or agency to compel the performance of a duty to which the petitioner has established a clear legal right.⁴ The petitioner must also establish that there has been an arbitrary refusal or failure to act, and that no other adequate remedy is available.⁵ Ultimately, the issuance of such a writ is within the discretion of the Superior Court.⁶

(7) In this case, the Superior Court correctly determined that Lyons was not entitled to a writ of mandamus. Lyons has not demonstrated that the Department of Correction failed or refused to perform a duty owed to him.

(8) It is manifest on the face of Lyons' opening brief that the appeal is without merit. The issues presented on appeal are controlled by settled Delaware law and, to the extent judicial discretion is implicated, there was no abuse of discretion.

³By letter dated June 19, 2003, the Department of Justice submitted to this Court a status report on Lyons' application for transfer.

⁴*Clough v. State*, 686 A.2d 158, 159 (Del. 1996).

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

⁶*Ingersoll v. Rollins Broadcasting of Delaware, Inc.*, 272 A.2d 336, 338 (1970).

NOW, THEREFORE, IT IS ORDERED that, pursuant to Supreme Court Rule 25(a), the State of Delaware's motion to affirm is GRANTED. The judgment of the Superior Court is AFFIRMED.

BY THE COURT:

/s/ Myron T. Steele
Justice