

IN THE SUPREME COURT OF THE STATE OF DELAWARE

IN THE MATTER OF THE §
PETITION OF ROBERT ALLEY § No. 660, 2010
FOR A WRIT OF MANDAMUS §

Submitted: October 27, 2010
Decided: December 8, 2010

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

ORDER

This 8th day of December 2010, upon consideration of the petition of Robert Alley for an extraordinary writ of mandamus and the State's motion to dismiss, it appears to the Court that:

(1) The petitioner, Robert Alley, seeks to invoke the original jurisdiction of this Court to issue a writ of mandamus directed to a judge of the Superior Court and to an individual probation officer employed by the Department of Correction. It is not entirely clear what relief Alley is seeking, but we infer from Alley's allegations that he seeks to have a detainer lodged against him in Pennsylvania removed and to have a violation of probation (VOP) charge pending against him dismissed. The State of Delaware has filed a response and motion to dismiss Alley's petition. After careful review, we find that Alley's petition manifestly fails to invoke the original jurisdiction of this Court. Accordingly, the petition must be **DISMISSED**.

(2) The record reflects that Alley was arrested in July 2007 and later indicted on charges of resisting arrest, failing to obey a police signal, and criminal impersonation. After he failed to appear in Superior Court, a bench warrant was issued for his arrest. While he was a fugitive, Alley committed new crimes in Pennsylvania. During his term of incarceration in Pennsylvania, Alley sought to be returned to Delaware through the Interstate Agreement on Detainers (IAD).¹ Alley was returned to Delaware pursuant to the IAD in December 2008 and pled guilty to resisting arrest and criminal impersonation. The Superior Court sentenced Alley to a total period of three years at Level V incarceration, to be suspended after serving 3 months (with credit for twelve days served) for a period of probation. After serving his term of incarceration in Delaware, Alley was transferred back to Pennsylvania in March 2009 to continue serving his sentence there.

(3) After being released on parole by Pennsylvania authorities, Alley began serving his Delaware probation concurrent to his Pennsylvania parole under the supervision of Delaware authorities. Alley last reported to his probation officer in January 2010. He then absconded from Delaware and eventually was arrested on new criminal charges in Colorado in March 2010. As a result, Delaware authorities charged him with a VOP.

¹ 11 Del. C. § 2540, *et. seq.*

Pennsylvania authorities charged him with a violation of parole. He was returned to Pennsylvania where he was found guilty of a parole violation and sentenced to ninety days imprisonment on September 27, 2010. Delaware authorities lodged a detainer against Alley. When his Pennsylvania sentence is complete, he will be returned to Delaware to face his pending VOP charge.

(4) Alley filed his most recent petition for a writ of mandamus contending that the detainer lodged against him is illegal because his Delaware sentence had expired and thus he could not be charged with a VOP. Alternatively, Alley contends that he was serving his Pennsylvania parole at the time of his March arrest and had not yet begun to serve his Delaware probationary sentence and thus could not be charged with a VOP.

(5) 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.² 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.³ More importantly, the

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

³ *Canaday v. Superior Court*, 116 A.2d 678, 682 (Del. 1955).

Court's jurisdiction to issue an extraordinary writ is limited to instances when the respondent is a court or judge thereof.⁴

(6) In this case, the Court has no original jurisdiction to issue a writ of mandamus directed to the Department of Correction or one of its employees. Moreover, Alley cannot establish a legal right either to discharge of the detainer or dismissal of the VOP charge. Delaware law prohibits concurrent prison sentences, but it does not prohibit concurrent terms of probation.⁵ Therefore, upon his release from prison in Pennsylvania in 2009, Alley began serving both his Pennsylvania parole and his Delaware probation concurrently. His Delaware probationary term had not expired at the time he was arrested on new criminal charges. The VOP charge thus is entirely legal.

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

BY THE COURT:

Myron T. Steele
Chief Justice

⁴ *In re Hitchens*, 600 A.2d 37, 38 (Del. 1991).

⁵ Compare DEL. CODE ANN. tit. 11, § 3901(d) with DEL. CODE ANN. tit 11, § 4333(c).