

IN THE SUPREME COURT OF THE STATE OF DELAWARE

WILLIAM F. BURRIS,	§
	§ No. 2, 2021
Defendant Below,	§
Appellant,	§
	§
v.	§ Court Below–Superior Court
	§ of the State of Delaware
STATE OF DELAWARE,	§
	§ C.A. No. K20M-10-021
Plaintiff Below,	§
Appellee.	§

Submitted: January 12, 2021
Decided: February 16, 2021

Before **SEITZ**, Chief Justice; **VALIHURA** and **MONTGOMERY-REEVES**, Justices.

ORDER

After careful consideration of the appellant’s opening brief, the State’s motion to affirm, and the Superior Court record, it appears to the Court that:

(1) The appellant, William F. Burris, appeals the Superior Court’s dismissal of his petition for a writ of mandamus as factually and legally frivolous under 10 *Del. C.* § 8803(b).¹ The State has filed a motion to affirm the judgment below on the ground that it is manifest on the face of Burris’s opening brief that his appeal is without merit. We agree and affirm.

¹ 10 *Del. C.* § 8803(b) (providing that a court shall conduct an initial review of a complaint filed by a *pro se* litigant and dismiss it if the court finds that the action is factually frivolous, malicious, or legally frivolous).

(2) In 1992, Burris pleaded guilty to one count of first degree unlawful sexual intercourse, one count of second degree unlawful sexual intercourse, and two counts of sexual exploitation of a child. These convictions required that Burris serve a cumulative minimum mandatory sentence term of twenty-nine years. Following a presentence investigation, the Superior Court sentenced Burris to a total of forty-two years of Level V incarceration, followed by decreasing levels of supervision. In 1993, the Superior Court reduced Burris’s Level V period of incarceration to thirty-two years. This modification did not reduce or otherwise affect the twenty-nine year minimum mandatory prison term Burris was required to serve by law.

(3) On October 20, 2021, Burris filed a petition for a writ of mandamus in the Superior Court. In his petition, Burris argued that the Department of Correction’s Offender Status Sheet incorrectly reflected that he had earned only 364 days of statutory good time credit. Burris asked the Superior Court to compel the Department of Correction to award him the “correct” amount statutory good time credit to which he alleged that he was entitled—900 days. The Superior Court dismissed the petition.² This appeal followed.

(4) “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

² *Burris v. Super. Ct.*, 2020 WL 7365811 (Del. Super. Ct. Dec. 15, 2020).

duty to which the petitioner has established a clear legal right.”³ Before the court may issue a writ, the petitioner must demonstrate that: (i) he has a clear right to the performance of a duty; (ii) no other adequate remedy is available; and (iii) the lower tribunal has arbitrarily failed or refused to perform its duty.⁴

(5) We agree with the Superior Court that Burris has not established a basis for the issuance of a writ of mandamus. As the Superior Court observed, Burris has neither demonstrated a clear right to good time credit of more than 364 days nor presented any evidence to support his argument. To the extent that Burris asserts that “every other” inmate serving a mandatory prison term has received good time credit at a rate of 2.5 days per month, we note that the General Assembly amended 11 *Del. C.* § 4381 in 2010 to allow prisoners serving certain mandatory sentences to earn good time credit. Although this amendment supplanted the previous rule that prisoners serving minimum mandatory sentences could not earn good time credit,⁵ the amendment also expressly excluded sentences—like Burris’s—imposed prior to its enactment.⁶ Under the circumstances, the Superior Court did not err or abuse its discretion when it dismissed Burris’s petition as factually and legally frivolous.

³ *Clough v. State*, 686 A.2d 158, 159 (Del. 1996).

⁴ *In re: Bordley*, 545 A.2d 619, 620 (Del. 1988).

⁵ *See Watson v. Burgan*, 610 A.2d 1364, 1367 (Del. 1992) (“[E]ntitlement to [good time] credits is implicitly denied to prisoners serving minimum mandatory sentences.”).

⁶ 11 *Del. C.* § 4381(b) (“The awarding of good time credit set forth in subsection (a) of this section above will not apply to ... sentences imposed prior to the enactment of this statute.”).

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

BY THE COURT:

/s/ Collins J. Seitz, Jr.
Chief Justice