

IN THE SUPREME COURT OF THE STATE OF DELAWARE

IN THE MATTER OF THE           §  
PETITION OF JAMES           §     No 536, 2001  
ARTHUR BIGGINS FOR         §  
A WRIT OF MANDAMUS.       §

Before **VEASEY**, Chief Justice, **WALSH** and **HOLLAND**, Justices.

Submitted: November 15, 2001

Decided: December 7, 2001

**ORDER**

This 7<sup>th</sup> day of December 2001, upon consideration of the petition for a writ of mandamus filed by James Arthur Biggins, the answer and motion to dismiss filed by the State of Delaware, and Biggins' request to voluntarily dismiss the petition, it appears to the Court that:

(1) Biggins is currently in the custody of the Department of Correction.<sup>1</sup> According to Biggins, in early September 2001, he filed two complaints in the Superior Court. One complaint was filed in Kent County against the Department of Correction ("Kent County case").<sup>2</sup> The other

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<sup>1</sup>See *Biggins v. State*, Del. Supr., No. 468, 1997, Walsh, J., 1999 WL 1192332 (Nov. 24, 1999) (ORDER) (affirming Biggins' convictions and sentence).

<sup>2</sup>*Biggins v. Department of Correction*, Del. Super., C.A. No. 01M-09-008.

complaint was filed in Sussex County against several attorneys (“Sussex County case”).<sup>3</sup>

(2) In his petition for a writ of mandamus, Biggins alleges that the Superior Court refused to acknowledge receipt of the complaints in both his Kent County case and his Sussex County case. The State’s answer and motion to dismiss clarifies, however, that both of Biggins’ cases have been dismissed. By order dated October 10, 2001, the Superior Court dismissed the Kent County case.<sup>4</sup> By order dated November 5, 2001, the Superior Court dismissed the Sussex County case.<sup>5</sup>

(3) In his request to voluntarily dismiss his petition for a writ of mandamus, Biggins acknowledges that he was aware that his Sussex County case had been dismissed. Indeed, Biggins has filed a notice of appeal from that dismissal.<sup>6</sup> Consequently, to the extent Biggins’ petition for a writ of mandamus concerns his Sussex County case, Biggins’ petition is moot.

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<sup>3</sup>*Biggins v. Callaway, et al.*, Del. Super., C.A. No. 01C-08-026.

<sup>4</sup>*Biggins v. Department of Correction*, Del. Super., C.A. No. 01M-09-008, Witham, J. (Oct. 10, 2001).

<sup>5</sup>*Biggins v. Callaway, et al.*, Del. Super., C.A. No. 01C-08-026, Bradley, J. (Nov. 5, 2001).

<sup>6</sup>*Biggins v. Callaway, et al.*, Del. Supr., No. 581, 2001.

(4) Biggins does not concede, however, that he was aware that his Kent County case had been dismissed. Indeed, in his request to voluntarily dismiss his mandamus petition, Biggins contends that he learned that his Kent County case had been dismissed from the State’s answer and motion to dismiss. In turn, Biggins requests that the Court (i) levy “appropriate sanctions” against the Kent County Superior Court for its failure to notify him of the October 10 dismissal, and (ii) enlarge the period from which to file a timely notice of appeal from the October 10 dismissal.

(5) On November 26, 2001, Biggins filed an untimely notice of appeal from the October 10 dismissal of his Kent County case.<sup>7</sup> The Clerk has issued a notice to Biggins to show cause why the appeal should not be dismissed as untimely filed. If Biggins argues in his response to the notice to show cause that his untimely appeal is related to court-related personnel, the Court will address Biggins’ claim and will determine whether his case falls within the exception to the general rule that mandates the timely filing of a notice of appeal.<sup>8</sup>

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<sup>7</sup>*Biggins v. Department of Correction*, Del. Supr., No. 615, 2001.

<sup>8</sup>*See Bey v. State*, Del. Supr., 402 A.2d 362, 363 (1979) (holding that the defendant’s untimely notice of appeal was attributable to court-related personnel).

(6) This Court will issue a writ of mandamus to a trial court only when the petitioner can show that there is a clear right to the performance of a duty at the time of the petition, no other adequate remedy is available, and that the trial court has failed or refused to perform its duty.<sup>9</sup> In the context of this mandamus proceeding, Biggins has not demonstrated that he is entitled to an enlargement of the appeal period from the October 10 dismissal of the Kent County case, nor has he demonstrated that he is without an appropriate remedy to do so.

NOW, THEREFORE, IT IS ORDERED that the State's motion to dismiss is GRANTED. Biggins' petition for a writ of mandamus is DISMISSED.

BY THE COURT:

/s/ E. Norman Veasey  
Chief Justice

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<sup>9</sup>*In re Bordley*, Del. Supr., 545 A.2d 619, 620 (1988).