

IN THE SUPREME COURT OF THE STATE OF DELAWARE

IN THE MATTER OF THE
PETITION OF RICHARD PEREZ
FOR A WRIT OF MANDAMUS.

No. 109, 2001

Submitted: March 23, 2001

Decided: May 14, 2000

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

ORDER

This 14th day of May 2001, upon consideration of the petition for a writ of mandamus filed by Richard Perez and the answer and motion to dismiss filed by the State of Delaware, it appears to the Court that:

(1) Perez has applied to this Court for a writ of mandamus to be directed to the Department of Correction and personnel in that agency. It appears that Perez alleges that correctional authorities have incorrectly calculated a Superior Court sentence imposed in April 1993¹ (and corrected on July 28, 2000) and have failed to given him credit for time he spent in the State of Maryland's penal system.

(2) It is well-settled Delaware law that "[t]his Court's original jurisdiction to issue a writ of mandamus is limited to instances when a

¹ *State v. Perez*, Del. Super., Cr.A.No. IN91-11-0929, Alford, J. (April 26, 1993).

respondent is a court or a judge thereof.”² Accordingly, Perez’ petition must be dismissed, because it requests the issuance of a writ to the Department of Correction.

(3) Moreover, this Court will issue a writ of mandamus to a trial court only when the petitioner can show that there is the clear right to the performance of a duty by the trial court, and that the trial court has arbitrarily refused or has failed to perform the duty.³ Here, Perez has not demonstrated that he has initiated the appropriate legal process in the Superior Court to effect a review of the Department of Correction’s calculation of his sentence. Because Perez has not demonstrated that he has the clear right to any performance of a duty by the Superior Court, he cannot prevail on a claim that the court has arbitrarily refused or failed to perform a duty. Accordingly, Perez’ petition for a writ of mandamus must be dismissed.

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

BY THE COURT:

/s/ Randy J. Holland
Justice

² Del. Const. art. IV, § 11(6); *In re Hitchens*, Del. Supr., 600 A.2d 37, 38 (1991).

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