

IN THE SUPREME COURT OF THE STATE OF DELAWARE

IN THE MATTER OF THE §
PETITION OF ANTONIO D. § No. 103, 2001
JONES FOR A WRIT OF §
MANDAMUS §

Submitted: March 26, 2001

Decided: April 9, 2001

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

ORDER

This 9th day of April 2001, upon consideration of the petition of Antonio D. Jones for a writ of mandamus as well as the response and motion to dismiss filed by the State of Delaware, it appears to the Court that:

(1) Jones filed the present petition requesting this Court to issue an original writ of mandamus directed to the Superior Court. Jones asks this Court to order the Superior Court to order the Department of Corrections to change the effective starting date of his sentence from October 26, 1997 to September 5, 1997. We find Jones' petition manifestly fails to invoke the original jurisdiction of this Court. Accordingly, his petition must be **DISMISSED**.

(2) The record reflects that Jones filed a petition for a writ of mandamus with the Superior Court in February 2001 seeking to compel correctional authorities to change the effective start of his sentence from October 26, 1997, which the Superior Court held was the day he actually

reported to prison to begin serving his sentence, to September 5, 1997, which was the date referenced in the Superior Court's sentencing order. On February 23, 2001, the Superior Court dismissed Jones' petition on the ground that it was factually frivolous. Jones did not appeal from that ruling.

(3) This Court may issue a writ of mandamus to compel a trial court to perform a duty. As a condition precedent to the performance of that duty, it must be demonstrated to this Court: that the complainant has a clear right to the performance of the duty; that no other remedy is available; and that the trial court has arbitrarily failed or refused to perform its duty.¹ In this case, it is manifest that Jones could have appealed from the Superior Court's February 23, 2001 decision but did not. This Court will not allow a defendant, who clearly has an adequate remedy in the appellate process, to use the extraordinary writ process as a substitute for a timely-filed appeal.² Accordingly, Jones' petition fails to invoke the original jurisdiction of this Court because he had another adequate remedy available to him, which he failed to pursue. Furthermore, Jones' has not and cannot establish a clear right to relief he seeks, nor can he show that the Superior Court arbitrarily failed to perform a duty owed to him.

¹ *In re Hyson*, Del. Supr., 649 A.2d 807, 808 (1994).

² *See Matushefske v. Herlihy*, Del. Supr., 214 A.2d 883, 885 (1965).

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