

IN THE SUPREME COURT OF THE STATE OF DELAWARE

IN THE MATTER OF THE           §     No. 378, 2003  
PETITION OF MICHAEL YOST     §  
FOR A WRIT OF MANDAMUS.     §     Def. ID No. 0008021879

Submitted: September 17, 2003  
Decided:    October 15, 2003

Before **HOLLAND, BERGER** and **STEELE**, Justices.

**ORDER**

This 15<sup>th</sup> day of October 2003, upon consideration of the petition for a writ of mandamus filed by Michael Yost and the answer and motion to dismiss filed by the State of Delaware,<sup>1</sup> it appears to the Court that:

(1) In 2001, Yost pled guilty to Burglary in the Second Degree, two counts of Felony Theft, and Attempted Escape. Yost was sentenced to a total

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<sup>1</sup>On August 27, 2003, Yost filed a document that appears to be a response to the State's answer and motion to dismiss. Yost enclosed with his document a copy of a petition for a writ of mandamus dated August 22, 2003, that Yost had purportedly filed in the Superior Court. By letter dated September 12, 2003, the Clerk asked the State to ascertain the status of Yost's Superior Court mandamus petition. By letter dated September 17, 2003, the State reported that Yost had not filed a mandamus petition in the Superior Court within the last month, although an earlier mandamus petition was returned to Yost for non-compliance with the Superior Court's rules.

Supreme Court Rule 43(b)(vii) provides that "[u]pon receipt of the writ, no further submissions by the petitioner will be accepted without leave of the Court." Yost neither sought nor received leave of the Court to file a response to the State's answer. Accordingly, Yost's document filed on August 27, 2003, and a second document entitled "affidavit" filed on September 4, 2003, shall be stricken as nonconforming documents. *See Del. Supr. Ct. R. 34.*

of seven years at Level V, suspended after three years, for two and one-half years at decreasing levels of supervision.

(2) The sentencing order provided that if Yost completed the Key Program, the three year term at Level V was to be suspended. Conversely, if Yost did not complete the program, he was to serve the three year term. It appears that Yost entered the Key Program several times but was removed each time for non-compliance with either program or institutional rules.

(3) Yost filed a motion for modification of sentence in the Superior Court on July 29, 2003. Three days later, Yost applied to this Court for a writ of mandamus to be directed to the Superior Court. In his mandamus petition, Yost asks this Court to order the Superior Court to either modify his sentence or to order the Department of Correction to place him in the Key Program.

(4) This Court has the 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 has failed or refused to perform its duty.<sup>2</sup> Yost's petition fails on all three requirements. Yost has not established a right to the relief he seeks, nor has he established that the Superior Court has arbitrarily failed to perform a duty or that he is without

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

an adequate remedy. For instance, it appears from the Superior Court docket that Yost's motion for modification of sentence was denied on September 30, 2003. Yost may appeal to this Court for a review of that judgment.

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

BY THE COURT:

/s/ Carolyn Berger  
Justice