

IN THE SUPREME COURT OF THE STATE OF DELAWARE

IN THE MATTER OF THE
PETITION OF TIMOTHY J.
THOMAS FOR A WRIT OF
MANDAMUS

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No. 410, 2003

Submitted: December 1, 2003

Decided: January 20, 2004

Before **VEASEY**, Chief Justice, **HOLLAND** and **JACOBS**, Justices

ORDER

This 20th day of January 2004, upon consideration of Timothy J. Thomas' petition for a writ of mandamus, the State's response thereto, and the record in Superior Court I.D. No. 0001016149, it appears to the Court that:

(1) The petitioner, Timothy J. Thomas, seeks to invoke this Court's original jurisdiction to issue an extraordinary writ of mandamus¹ to compel the Superior Court to rule on his motion for correction of his July 26, 2001 violation of probation ("VOP") sentence.² The State of Delaware, as the real party in interest, has filed a response to the petition conceding that it does not appear that the Superior Court ever ruled on Thomas' Rule 35(a) motion. Because Thomas already has served the sentence at issue, however, his petition must be **DISMISSED AS MOOT.**

¹ Del. Const. art. IV, § 11(6); Supr. Ct. R. 43.

² Super. Ct. Crim. R. 35(a).

(2) On June 22, 2000, Thomas pleaded guilty to Robbery in the Second Degree. He was sentenced to two years incarceration at Level V, to be suspended after six months for a total of eighteen months at decreasing levels of probation. On the same date, Thomas was found to have committed a VOP in connection with a prior sentence for criminal mischief and was sentenced to an additional Level V term.

(3) The record reflects that, on September 25, 2000, the Superior Court modified Thomas' Robbery in the Second Degree sentence. The record further reflects that, by October 3, 2000, Thomas had completed the Level V sentences imposed on June 22, 2000 and had been placed on probation.

(4) On July 26, 2001, Thomas was found to have committed a VOP in connection with his Robbery in the Second Degree sentence and was sentenced to a term of imprisonment at Level V.

(5) On August 29, 2001, Thomas filed a motion for reduction of that VOP sentence pursuant to Superior Court Criminal Rule 35(b). On October 17, 2001, Thomas filed a separate motion for correction of the same sentence pursuant to Superior Court Criminal Rule 35(a). While the record reflects that the Superior Court ruled on Thomas' Rule 35(b) motion by order dated January 2, 2002, there is

no order in the record specifically referencing Thomas' Rule 35(a) motion or specifically addressing the issues contained in that motion.

(6) On June 6, 2002, Thomas was found to have committed a second VOP in connection with his Robbery in the Second Degree sentence and again was sentenced to a term of imprisonment at Level V. Thomas concedes that he now has completed his entire sentence on his Robbery in the Second Degree conviction.

(7) A writ of mandamus is an extraordinary remedy issued by this Court to compel a trial court to perform a duty.³ As a condition precedent to the issuance of the writ, Thomas must demonstrate that: he has a clear right to the performance of the duty; no other adequate remedy is available; and the trial court has arbitrarily failed or refused to perform its duty.⁴

(8) Thomas has not demonstrated that he is entitled to the issuance of a writ of mandamus. Thomas concedes that he has completed the July 26, 2001 VOP sentence that is the subject of his mandamus petition and, indeed, that he has completed his entire sentence for Robbery in the Second Degree. As such, his mandamus petition is moot.⁵

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

⁴ *Id.*

⁵ *GMC v. New Castle County*, 701 A.2d 819, 823-24 (Del. 1997).

(9) Thomas argues that the mootness doctrine should not apply in this case because the issue he raised in his Rule 35(a) motion was “of public importance and its resolution will have a continuing and significant impact on the development of the law.”⁶

(10) This argument is unavailing. We have reviewed Thomas’ motion, which alleges error in the proceedings leading to the finding of a VOP against him, and do not find that it implicates questions of public importance or that its resolution would have a continuing and significant impact on the development of the law.⁷

NOW, THEREFORE, IT IS ORDERED that Thomas’ petition for a writ of mandamus is DISMISSED AS MOOT.

BY THE COURT:

/s/ Randy J. Holland
Justice

⁶ *Stifel Fin. Corp. v. Cochran*, 809 A.2d 555, 559 (Del. 2002).

⁷ We also find that the issues presented by Thomas in his underlying motion are likely to be present in future cases that are capable of review. *Radulski v. Del. State Hospital*, 541 A.2d 562, 566 (Del. 1988).

