

IN THE SUPREME COURT OF THE STATE OF DELAWARE

TAARIQ U. ALI,	§
	§ No. 448, 2011
Petitioner Below-	§
Appellant,	§
	§ Court Below—Superior Court
v.	§ of the State of Delaware
	§ in and for New Castle County
PERRY PHELPS,	§ C.A. No. N11M-06-043
	§
Respondent Below-	§
Appellee.	§

Submitted: September 27, 2011

Decided: October 11, 2011

Before **STEELE**, Chief Justice, **HOLLAND** and **BERGER**, Justices

ORDER

This 11th day of October 2011, upon consideration of the appellant’s opening brief and the appellee’s motion to affirm pursuant to Supreme Court Rule 25(a), it appears to the Court that:

(1) The petitioner-appellant, Taariq U. Ali, filed an appeal from the Superior Court’s July 25, 2011 order dismissing his petition for a writ of mandamus. The respondent-appellee, Perry Phelps, has moved to affirm the Superior Court’s judgment on the ground that it is manifest on the face of the opening brief that the appeal is without merit.¹ We agree and affirm.

¹ Supr. Ct. R. 25(a).

(2) The record reflects that Ali is an inmate incarcerated at the James T. Vaughn Correctional Center (“JTVCC”) in Smyrna, Delaware. He is serving a life sentence after being convicted of Attempted Murder in the First Degree in 1990. Ali has two prior escape attempts. In 1982, he escaped after being convicted of Robbery and Conspiracy. In 2008, Ali escaped from custody in the Philadelphia airport while being transported to another prison. Ali is currently housed in the Security Housing Unit (“SHU”), a high security area of JTVCC. Under Department of Correction (“DOC”) policy, prior escapees are housed in the SHU. In his mandamus petition filed in the Superior Court, Ali sought to compel Phelps, the Warden at JTVCC, to transfer him from SHU to an area with lower security.

(3) In this appeal, Ali claims that his constitutional rights are being violated by Phelps’ refusal to transfer him to a lower security area of the prison.

(4) A writ of mandamus is an extraordinary remedy issued by the Superior Court to compel a public official or administrative agency to perform a duty.² As a condition precedent to the issuance of the writ, the petitioner must demonstrate that a) he has a clear right to the performance of

² *Clough v. State*, 686 A.2d 158, 159 (Del. 1996).

the duty; b) no other adequate remedy is available; and c) the public official or agency has arbitrarily failed or refused to perform a duty.³

(5) As the Superior Court correctly determined, there is no basis for the issuance of a writ of mandamus in this case. Ali has failed to demonstrate that Perry Phelps or the DOC has arbitrarily failed or refused to perform a duty. Ali has no right to a particular prison classification.⁴ In this case, Ali, as a prior escapee, is properly being housed at SHU in conformity with DOC policy. Moreover, Ali's claim of a violation of his constitutional rights is not properly brought in a petition for a writ of mandamus.

(6) It is manifest on the face of the opening brief that this appeal is without merit because the issues presented on appeal are controlled by settled Delaware law and, to the extent that judicial discretion is implicated, there was no abuse of discretion.

NOW, THEREFORE, IT IS ORDERED that Phelps' motion to affirm is GRANTED. The judgment of the Superior Court is AFFIRMED.

BY THE COURT:

/s/ Randy J. Holland
Justice

³ *Id.*

⁴ *Id.*