

IN THE SUPREME COURT OF THE STATE OF DELAWARE

HUBERT E. PARKER,	§
	§
Petitioner Below-	§ No. 538, 2002
Appellant,	§
	§ Court Below—Superior Court
v.	§ of the State of Delaware,
	§ in and for Sussex County
STATE OF DELAWARE	§ C.A. No. 01M-12-007
DEPARTMENT OF	§
CORRECTIONS,	§
	§
Respondent Below-	§
Appellee.	§

Submitted: November 13, 2002

Decided: January 6, 2003

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

ORDER

This 6th day of January 2003, upon consideration of the appellant's opening brief and the State's motion to affirm, it appears to the Court that:

(1) The appellant, Hubert Parker, filed this appeal from the Superior Court's dismissal of his petition for a writ of mandamus. Parker sought a writ compelling correctional officials to provide him with reasonable medical care by treating him for Hepatitis C with Interferon injections administered at the Delaware Psychiatric Center. The Superior Court dismissed the petition when Parker, the day after the hearing on his petition, signed an informed consent form accepting the Department of Correction's proposal to treat Parker with Interferon and

Ribavirin at the Sussex Correctional Institute (SCI). The State has filed a motion to affirm the Superior Court's judgment on the ground that it is manifest on the face of Parker's opening brief that his appeal is without merit. We agree and affirm.

(2) Parker filed his petition for a writ of mandamus in December 2001. He alleged the Department of Correction (DOC) and Correctional Medical Services (CMS) were violating his civil rights by refusing to provide him with reasonable medical care for treatment of Hepatitis C. Parker asserted that he could not receive adequate Interferon treatment at SCI because he suffers from depression and bipolar disorder, and SCI would not be able to deal with the suicidal tendencies that Parker alleged would be a likely side effect of the Interferon treatment.

(3) The Superior Court held an evidentiary hearing on August 21, 2002. The Superior Court found, as a matter of fact, that DOC had offered to treat Parker at SCI with Interferon injections but that Parker had refused due to the alleged psychiatric risks. The Superior Court also found as a matter of fact, that two psychiatrists had determined that the DOC's proposed course of treatment would be safe. The Superior Court, therefore, concluded that Parker's demand to receive treatment at the Delaware Psychiatric Center was not reasonable and that Parker had refused adequate treatment without justification. The Superior Court further

noted, however, that Parker testified under oath at the hearing that he no longer objected to the DOC's proposed form of treatment. The day after the hearing, the Superior Court received a letter from DOC's counsel enclosing a copy of an informed consent form signed by Parker, withdrawing his prior objections. Based on Parker's informed consent to DOC's proposed form of treatment, which made the request for mandamus relief moot, the Superior Court dismissed Parker's petition.

(4) The Superior Court may issue a writ of mandamus to compel a public official to perform a duty when the petitioner has established a clear legal right to the relief sought.¹ On appeal, this Court reviews the denial of mandamus relief for abuse of discretion.² In this case, we find no abuse of the Superior Court's discretion in dismissing Parker's petition. Parker's informed consent to medical treatment rendered his petition for a writ of mandamus moot. While Parker seems to argue on appeal that his consent was coerced, not informed, we find nothing in the record to support this contention. Accordingly, we find no abuse of the Superior Court's discretion in denying Parker's attempts to reargue the dismissal of his petition.

¹ *Clough v. State*, 686 A.2d 158, 159 (Del. 1996) (citing *Milford 2nd St. Players v. Delaware Alcoholic Bev. Control Comm'n*, 552 A.2d 855 (Del. Super. Ct. 1988)).

² *Ingersoll v. Rollins Broad. of DE, Inc.*, 272 A.2d 336 (Del. 1970).

NOW, THEREFORE, IT IS ORDERED that the judgment of the Superior Court is AFFIRMED.

BY THE COURT:

/s/ Myron T. Steele
Justice