

IN THE SUPREME COURT OF THE STATE OF DELAWARE

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|-------------------------|---|------------------------------|
| JOHN A. WARD, | § | |
| | § | |
| Petitioner Below- | § | No. 585, 2003 |
| Appellant, | § | |
| | § | |
| v. | § | Court Below---Superior Court |
| | § | of the State of Delaware, |
| | § | in and for New Castle County |
| MELVIN HENNESSY, MIKE | § | C.A. No. 03M-10-122 |
| DELOY and ROBERT SMITH, | § | |
| | § | |
| Respondents Below- | § | |
| Appellees. | § | |

Submitted: May 21, 2004
Decided: August 3, 2004

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

ORDER

This 3rd day of August 2004, upon consideration of the briefs on appeal and the record below, it appears to the Court that:

(1) The petitioner-appellant, John A. Ward, filed an appeal from the Superior Court's November 5, 2003 order dismissing his petition for a writ of mandamus for failure to state a claim upon which relief may be granted. We find no merit to the appeal. Accordingly, we AFFIRM.¹

¹ Along with his petition for a writ of mandamus, Ward also filed a civil complaint, which was assigned to another Superior Court judge. The record reflects that the civil complaint was not dismissed and service of process issued. The allegations contained in the complaint were incorporated by reference in the petition for a writ of mandamus and, therefore, were reviewed by this Court in connection with the instant appeal.

(2) In September 2001, correctional officers conducted a “shakedown” of the Pre-Release Community Room at the Sussex Correctional Institute, Georgetown, Delaware (“SCI”), where Ward and another inmate were working. The officers confiscated several computer disks, which they suspected were being used in an illegal gambling operation. Ward and the other inmate were charged with disciplinary violations and were transferred to the Segregated Detention Area of SCI pending an investigation. At a disciplinary hearing in October 2001, Staff Lieutenant Hennessy found that Ward had committed the disciplinary violations and imposed a sanction of 10 days in disciplinary segregation. Deputy Warden Deloy affirmed the hearing officer’s decision on appeal.

(3) On October 30, 2003, Ward filed a petition for a writ of mandamus in the Superior Court alleging that correctional officers had conspired against him in connection with the disciplinary charges and requesting the Superior Court to order the Department of Correction to remove the disciplinary reports relating to the incident from his inmate file. He claims in this appeal that the Superior Court abused its discretion by denying his petition for a writ of mandamus.

(4) A writ of mandamus is an extraordinary remedy issued to compel a lower tribunal to perform a nondiscretionary duty.² As a condition precedent to the

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

issuance of the writ, the petitioner must demonstrate that: he has a clear right to the performance of the duty; no other adequate remedy is available; and the lower tribunal has arbitrarily failed or refused to perform that duty.³

(5) Ward has failed to demonstrate that the Department of Correction had a nondiscretionary duty to remove the disciplinary reports from his inmate file. Moreover, he has failed to demonstrate that no other remedy is available to him, particularly since his civil lawsuit dealing with the incident is currently pending in the Superior Court. We, thus, find no abuse of discretion on the part of the Superior Court in denying Ward's petition for a writ of mandamus.

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

BY THE COURT:

/s/ Myron T. Steele
Chief Justice

³ Id.