

IN THE SUPREME COURT OF THE STATE OF DELAWARE

IN THE MATTER OF THE	§	No. 176, 2002
PETITION OF GORDON L.	§	
MANIS FOR A WRIT OF	§	Def. ID No. 9812000028
MANDAMUS.	§	Super. Ct., C.A. No. 01M-11-072

Submitted: April 24, 2002

Decided: May 22, 2002

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

ORDER

This 22nd day of May 2002, upon consideration of the petition for a writ of mandamus filed by Gordon L. Manis, and the answer and motion to dismiss filed by the State of Delaware, it appears to the Court that:

(1) In October 1999, Gordon L. Manis pled guilty to Manslaughter and Driving Under the Influence. By sentencing order dated January 7, 2000, as later modified on February 17, 2000, and October 26, 2001, the Superior Court sentenced Manis to a total of 15 years imprisonment, suspended after for 30 months for 7½ years at Level IV home confinement, suspended after 18 months, for the balance at Level III probation.¹ Manis was ordered to be held at Level V imprisonment pending his transfer to Level IV home confinement.

¹ *State v. Manis*, Del. Super., No. 9812000028, Silverman, J.

(2) By order dated February 21, 2002, the Superior Court modified Manis' sentence to provide that he should be "held at Level III while awaiting for Level IV in any program." On March 5, 2002, Manis was transferred to a Level IV facility where he is participating in the Crest program.

(3) In his petition for a writ of mandamus, Manis seeks review of the Superior Court's decision dated March 22, 2002, that dismissed as moot Manis' November 2001 mandamus petition.² According to Manis, his mandamus petition had "sought [his] removal from Key Program treatment" on the basis that "he had participated in . . . treatment programs . . . for over the 15 month maximum period allowed by statutory law."

(4) This Court may issue a writ of mandamus to compel a trial court to perform a duty, but only when the complainant 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.³ In this case, Manis could have filed an appeal from the March 22 dismissal order,

² *Manis v. Williams, et al.*, Del. Super., C.A. No. 01M-11-072, Silverman, J. (Mar. 22, 2002).

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

but he did not. Manis cannot now use mandamus as a substitute for the regular avenue of appellate review.⁴

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

BY THE COURT:

/s/ Randy J. Holland
Justice

⁴ *In re Barbee*, 693 A.2d 317, 319 (Del. 1997).