

IN THE SUPREME COURT OF THE STATE OF DELAWARE

IN THE MATTER OF THE §
PETITION OF GORDON L. § No. 126, 2002
MANIS FOR A WRIT OF §
MANDAMUS. § Def. ID No. 9812000028

Submitted: April 2, 2002
Decided: May 22, 2002

Before **VEASEY**, Chief Justice, **WALSH** and **HOLLAND**, 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 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 placement "in any Level IV 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 argues that his placement at Level IV is improper because it constitutes "imprisonment" and thus violates the plea agreement, which required only 30 months of imprisonment. Moreover, Manis complains that the February 21 order gives too much discretion to the Department of Correction as to his particular program placement.

(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.² "[I]n the absence of a clear showing of an arbitrary refusal or failure to act, this Court will not issue a writ of mandamus to compel a trial court to perform a particular

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

judicial function, to decide a matter in a particular way, or to dictate the control of its docket.”³

(5) In this case, Manis could have filed an appeal from the February 21 sentence modification order, but he did not. He cannot now use mandamus as a substitute for the regular avenue of appellate review.⁴ Moreover, Manis has not shown that the Superior Court has arbitrarily refused or failed to perform a duty owed to him.

NOW, THEREFORE, IT IS ORDERED that the motion to dismiss is GRANTED. The petition for writ of mandamus is DISMISSED.

BY THE COURT:

s/ Joseph T. Walsh
Justice

³*Id.*

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