

IN THE SUPREME COURT OF THE STATE OF DELAWARE

WILLIE C. LAND,	§
	§
Petitioner Below-	§ No. 297, 2004
Appellant,	§
	§
v.	§ Court Below—Superior Court
	§ of the State of Delaware,
STATE OF DELAWARE BOARD	§ in and for New Castle County
OF PAROLE,	§ C.A. No. 03M-12-073
	§
Respondent Below-	§
Appellee.	§

Submitted: August 30, 2004
Decided: October 13, 2004

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

ORDER

This 13th day of October 2004, upon consideration of the opening brief and the State’s motion to affirm, it appears to the Court that:

(1) The appellant, Willie Land, filed this appeal from the Superior Court’s denial of his petition for a writ of mandamus. The Board of Parole has filed a motion to affirm the judgment below on the ground that it is manifest on the face of Land’s opening brief that his appeal is without merit. We agree and affirm.

(2) The record reflects that Land filed his petition asking the Superior Court to issue a writ of mandamus directing the Board of Parole to hold a new parole violation hearing. The gist of Land’s petition alleged that the Board of

Parole's decision to revoke his parole in 2000 was based on the incorrect finding that he had violated a curfew provision upon which his parole was conditioned. The State moved to dismiss Land's petition for a writ of mandamus on the ground that parole decisions are discretionary, and a writ of mandamus may only be issued to direct the performance of a mandatory, non-discretionary duty. Alternatively, the State argued that Land's petition was an inappropriate attempt to appeal the Board of Parole's decision, which in fact, is not appealable.

(3) Having carefully considered the parties' respective positions, we find it manifest that the judgment of the Superior Court should be affirmed. A writ of mandamus is appropriate only if the petitioner can establish a clear legal right to the performance of a non-discretionary duty.¹ The Board of Parole's decisions are discretionary.² Accordingly, the Superior Court did not abuse its discretion in dismissing Land's petition.

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

BY THE COURT:

/s/ Randy J. Holland
Justice

¹ *Semick v. Department of Correction*, 477 A.2d 707, 708 (Del. 1984).

² *See Bruton v. Carroll*, 2003 WL 22321049 (Del. Oct. 7, 2003).