

IN THE SUPREME COURT OF THE STATE OF DELAWARE

IN THE MATTER OF THE                   §  
PETITION OF GORDON L.               §     No. 164, 2002  
MANIS FOR A WRIT OF               §  
MANDAMUS.                           §     Def. ID No. 9812000028

Submitted: April 17, 2002

Decided: May 22, 2002

Before **VEASEY**, Chief Justice, **WALSH** and **HOLLAND**, Justices.

**ORDER**

This 22<sup>nd</sup> 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.<sup>1</sup> Manis was ordered to be held at Level V imprisonment pending his transfer to Level IV home confinement.

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<sup>1</sup>*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 argues that his placement at Level IV constitutes "imprisonment" and thus violates the plea agreement which required only 30 months at Level V incarceration. Moreover, Manis complains that the February 21 order is inconsistent with the conditional release statute.<sup>2</sup> Manis seeks to compel the Superior Court to modify his sentence to place him at Level III probation.

(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.<sup>3</sup> "[I]n the absence of a clear showing of an arbitrary refusal or failure to act, this Court will not

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<sup>2</sup>Del. Code Ann. tit. 11, § 4348 (2001) provides that a person who is released early on conditional release due to good behavior credits "shall, upon release, be deemed as released on parole until the expiration of the maximum term or terms for which the person is sentenced."

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

issue a writ of mandamus to compel a trial court to perform a particular judicial function, to decide a matter in a particular way, or to dictate the control of its docket.”<sup>4</sup>

(5) Manis has not shown that he has a clear right to a sentence modification. A sentence to be served in a Level IV halfway house constitutes “imprisonment” for the purpose of establishing this Court’s jurisdiction to hear a direct appeal.<sup>5</sup> For the purpose of structuring a sentence, however, “Level IV is *not* imprisonment but a less intense level of supervision than Level V and a more intense level of supervision than Level III.”<sup>6</sup> “Participation in the Crest Program at Level IV, while considered ‘quasi-incarceration,’ does not constitute ‘actual incarceration’” and is not properly credited against a Level V sentence.<sup>7</sup>

(6) Moreover, Manis could have filed an appeal from the February 21 sentence modification order, but he did not. He cannot now use

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<sup>4</sup>*Id.*

<sup>5</sup>*Walt v. State*, 727 A.2d 836, 840 (Del. 1999).

<sup>6</sup>*Manis v. State*, 2001 WL 1006241 (Del. Supr.) (emphasis in original).

<sup>7</sup>*Mullen v. State*, 2001 WL 263115 (Del. Supr.)

mandamus as a substitute for the regular avenue of appellate review.<sup>8</sup> We will not issue a writ of mandamus directing the Superior Court to impose a different sentence upon Manis.

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/Joseph T. Walsh

Justice

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<sup>8</sup>*In re Barbee*, 693 A.2d 317, 319 (Del. 1997).