

IN THE SUPREME COURT OF THE STATE OF DELAWARE

IN THE MATTER OF THE
PETITIONS OF FRANCIS
ALLEN FOR WRITS OF
MANDAMUS AND OF ERROR
CORAM NOBIS.

No. 40, 2000

Submitted: February 7, 2000
Decided: March 1, 2000

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

ORDER

This 1st day of March 2000, upon consideration of the petitions of Francis Allen (“Allen”) for writs of mandamus and for a writ of error coram nobis and the State of Delaware’s answer seeking dismissal of the petitions, it appears to the Court that:

(1) In April 1994, Allen pleaded guilty in the Superior Court to the lesser included offense of second degree robbery. In June 1994, Allen was sentenced to three years at Level V imprisonment suspended for one year at Level III and two years at Level II probation.

(2) In October 1997, the Superior Court adjudged Allen guilty of violation of probation (“VOP”). Allen was sentenced to three years at Level

V imprisonment reduced to Level III upon Allen's entry into and completion of the New Hope Drug/Alcohol Residential Treatment Program.

(3) In December 1998, Allen filed a motion for postconviction relief. Allen's motion was denied by the Superior Court's order of March 23, 1999. Allen's appeal to the Supreme Court was dismissed for Allen's failure to prosecute the appeal.¹

(4) In November 1999, Allen filed a petition for a writ of mandamus in this Court. The case was assigned case No. 504, 1999. In his petition, Allen claimed that the Superior Court would not send him a copy of his 1997 VOP sentence order. Allen's petition was dismissed on November 17, 1999, after the Department of Justice obtained a certified copy of the VOP sentence order and forwarded it to Allen.² The case was closed on December 3, 1999.

(5) On January 12, 2000, Allen filed a document entitled "Memorandum in Support of Writ of Written Mandamus." The Clerk docketed Allen's "memorandum" in Allen's recently closed case, No. 504,

¹ *Allen v. State*, Del. Supr., No. 324, 1999, Holland, J., 1999 WL 734767 (Aug. 31, 1999) (ORDER).

² *In re Allen*, Del. Supr., No. 504, 1999, Hartnett, J., 1999 WL 1254572 (Nov. 17, 1999) (ORDER).

1999, and informed Allen that the Court had no jurisdiction to consider the document.

(6) On January 19, 2000, Allen filed a second “Memorandum in Support of Writ of Written Mandamus.” That document was also docketed in Allen’s recently closed case, No. 504, 1999.

(7) On January 24, 2000, Allen filed a document entitled “Writ of Error Coram Nobis.” Allen’s petition for a “Writ of Error Coram Nobis” informed the Clerk that Allen’s two memoranda “In Support of Writ of Written Mandamus” (hereinafter “mandamus petitions”) were not related to the writ of mandamus filed in Allen’s recently closed case, No. 504, 1999. Consequently, the Clerk transferred Allen’s mandamus petitions and his petition for a “Writ of Error Coram Nobis” to a new case, assigned a new case number, No. 40, 2000, and directed the State to file an answer to all three petitions. On February 7, 2000, the State filed an answer responding to one of the two mandamus petitions and to the petition for a “Writ of Error Coram Nobis.”³

³ It appears that the State may have overlooked the second “Memorandum in Support of Writ of Written Mandamus.”

(8) Allen’s petition for a “Writ of Error Coram Nobis” must be dismissed. The writ of error coram nobis is not one of the extraordinary writs within the original jurisdiction of this Court.⁴ Furthermore, the Court notes that the “Writ of Error Coram Nobis” is moot, as the Clerk transferred Allen’s two new mandamus petitions out of closed case No. 504, 1999, and assigned to them a new case number.

(9) Allen’s first mandamus petition asks this Court to grant a hearing before Allen’s sentencing judge. Allen contends that he is entitled to an explanation from the sentencing judge as to why it took 19 months for the Department of Correction to send Allen to the court-ordered New Hope Program. Allen submits that he requested a hearing in a letter to the sentencing judge on December 18, 1999, but that he has not received a court date.

(10) The Superior Court docket reflects that a letter from Allen to the sentencing judge was docketed on January 28, 2000. The corresponding docket entry states that Allen’s letter requests that he be “brought forth to

⁴ See Del. Const. art. IV, § 11(6); See also *In re Nicholson*, Del. Supr., No. 4, 1994, Walsh, J., 1994 WL 35367 (Jan. 31, 1994) (ORDER) (determining that Delaware has abolished the writ of error coram nobis).

answer allegations of refusal of court-ordered program.” By order dated February 2, 2000, the sentencing judge advised Allen that he was unable to provide Allen with the relief requested by Allen.

(11) Allen’s second mandamus petition claims that the Superior Court has refused to supply Allen with a free transcript of his 1997 VOP sentencing proceeding. It appears from the Superior Court docket that, by order docketed on January 12, 2000, the Superior Court denied Allen’s motion for transcript. According to Allen, he needs the transcript so that he can pursue post-conviction remedies. Allen requests that this Court grant his request for a free transcript.

(12) This Court will issue a writ of mandamus to a trial court only when the petitioner can show that there is the clear right to the performance of the duty at the time of the petition, no other adequate remedy is available, and the trial court has failed or refused to perform its duty.⁵ “[T]his Court will not 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.”⁶

⁵ *In re Bordley*, Del. Supr., 545 A.2d 619, 620 (1988)

⁶ *Id.*

(13) Allen’s mandamus petitions manifestly fail to invoke this Court’s original jurisdiction. Allen has not demonstrated that he is entitled to a hearing for an “explanation” or to “answer allegations” in connection with the court-ordered New Hope Program. Allen is not without an adequate remedy for a review of the Superior Court’s denial of transcript. Allen may file a petition for postconviction relief and may request, as part of that motion, that the Superior Court order the preparation of transcript. If Allen’s motion is unsuccessful, Allen may then appeal to this Court for a review of that final judgment, as well as any interlocutory judgment relating to the denial of a request for transcript.⁷

NOW THEREFORE IT IS ORDERED that the State’s motion to dismiss is GRANTED. Allen’s petitions for a writ of mandamus and petition for a writ of error coram nobis are DISMISSED.

BY THE COURT:

/s/ E. Norman Veasey
Chief Justice

⁷ *In re Hyson*, Del. Supr., 649 A.2d 807, 808 (1994).