

IN THE SUPREME COURT OF THE STATE OF DELAWARE

IN THE MATTER OF THE §
PETITION OF THOMAS MOORE § No. 121, 2002
FOR A WRIT OF MANDAMUS §

Submitted: April 2, 2002
Decided: May 6, 2002

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

ORDER

This 6th day of May 2002, upon consideration of the petition of Thomas Moore for a writ of mandamus, as well as the State’s answer and motion to dismiss,¹ it appears to the Court that:

(1) The petitioner, Thomas Moore, seeks to invoke the original jurisdiction of this Court by requesting that a writ of mandamus be issued to the Superior Court in order to correct his sentence to credit him with time Moore contends he already has served on his sentence. The State has filed a motion to dismiss. The Court has reviewed the parties’ respective positions carefully.

We find that Moore’s petition manifestly fails to invoke the original jurisdiction of this Court. Accordingly, the petition must be DISMISSED.

¹ On April 19, 2002, Moore filed a document titled, “Entreatment for Judicial Notice.” This document appears to be a response to the State’s answer and motion to dismiss. Supreme Court Rule 43(b)(vii), however, provides that, “[u]pon receipt of the writ, no further submissions by the petitioner will be accepted without leave of the Court.” Moore neither sought nor received leave of the Court to file a response to the State’s answer. Accordingly, Moore’s document shall be stricken as a nonconforming document. *See* DEL. SUP. CT. R. 34.

(2) The record reflects that in 1999 Moore pleaded guilty, among other things, to his fifth offense for driving under the influence. The Superior Court sentenced Moore, effective January 7, 2000, on the DUI charge to three years at Level V imprisonment, suspended after serving six months for two and a half years at Level IV residential drug treatment, suspended after successful completion of drug treatment for probation. In September 2000, the Superior Court found Moore in violation of probation and sentenced him to two and a half years at Level V imprisonment suspended entirely for two and a half years at Level IV Recovery Center of Delaware (RCD), suspended upon successful completion of the RCD program for probation. On January 6, 2001, Moore was arrested for a second probation violation for committing new charges, including second degree assault. The Superior Court sentenced him, among other things, to two years at Level V imprisonment suspended upon successful completion of the Key Program for one year at Level III probation.

(3) Moore has filed numerous motions and petitions in the Superior Court seeking to correct or modify his sentence. Moore contends that the Superior Court's VOP sentences do not properly credit him with all of the time he has served in prison on his underlying DUI sentence. In affirming the Superior Court's judgment following Moore's second VOP hearing, this Court

held that there was “no merit to Moore’s contention that he did not receive credit for all the time he previously served at Level V.”² At the present time, Moore has two additional appeals pending before this Court. The first appeal in case No. 459, 2001 is an appeal from the Superior Court’s denial of postconviction relief. The other appeal in case No. 519, 2001 is from the Superior Court’s denial of Moore’s motion to modify his sentence.

(4) This Court has authority to issue a writ of mandamus only when the petitioner can demonstrate a clear right to the performance of a duty, no other adequate remedy is available, and the trial court arbitrarily has failed or refused to perform its duty.³ Moore’s petition fails on all three requirements.

This Court already has held that the Superior Court’s VOP sentences properly credited Moore with time previously served. Accordingly, Moore cannot establish a right to the relief he seeks, nor can he establish that the Superior Court arbitrarily has failed to perform its duty. Furthermore, Moore presently is pursuing an appeal from the Superior Court’s denial of a sentence modification. This Court will not issue an extraordinary writ to a petitioner who has another adequate and complete remedy at law to correct the act of the

² *Moore v. State*, Del. Supr., No. 285, 2001, Walsh, J. (Jan. 9, 2002).

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

trial court that is alleged to be erroneous.⁴ Moore's appeal is an adequate and complete remedy.⁵

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

BY THE COURT:

s/Joseph T. Walsh
Justice

⁴ *Canaday v. Superior Court*, 116 A.2d 678, 682 (Del. 1955).

⁵ *See Matushefske v. Herlihy*, 214 A.2d 883, 885 (Del. 1965).