

IN THE SUPREME COURT OF THE STATE OF DELAWARE

IN THE MATTER OF THE PETITION §
OF WARDELL GILES FOR A WRIT OF § No. 297, 2005
MANDAMUS §

Submitted: July 25, 2005
Decided: September 12, 2005

Before **HOLLAND, BERGER, and JACOBS**, Justices.

ORDER

This 12th day of September 2005, it appears to the Court that:

(1) The petitioner, Wardell Giles, seeks to invoke this Court's original jurisdiction by requesting the issuance of a writ of mandamus. Although his petition is not entirely clear, Giles appears to be requesting this Court to issue a writ of mandamus to the Department of Correction to compel his placement in a specific treatment program. Giles also appears to want a writ of mandamus to be issued "to order the Superior Court to send [motions Giles' filed in Superior Court] to you for inspection." The State of Delaware has filed a motion to dismiss Giles' petition on the ground that it is frivolous and fails to state a claim for mandamus relief.

(2) We agree. The original jurisdiction of this Court to issue an extraordinary writ of mandamus is limited to instances when the respondent is a

court or judge thereof.¹ Accordingly, this Court does not have original jurisdiction to order the Department of Correction to take action in Giles' case. Moreover, to the extent Giles seeks to compel the Superior Court to send his motions to this Court for review, it is well established that a writ of mandamus cannot be used as a substitute for a timely-filed appeal.²

NOW, THEREFORE, IT IS ORDERED that the petition for a writ of mandamus is DISMISSED as moot.

BY THE COURT:

/s/ Carolyn Berger
Justice

¹ *In re Hitchens*, 600 A.2d 37, 38 (Del. 1991).

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