

IN THE SUPREME COURT OF THE STATE OF DELAWARE

PHIL JONES,	§
	§ No. 248, 2005
Defendant Below-	§
Appellant,	§
	§ Court Below—Superior Court
v.	§ of the State of Delaware
	§ in and for New Castle County
STATE OF DELAWARE,	§ C.A. No. 05M-03-070
	§
Plaintiff Below-	§
Appellee.	§

Submitted: September 9, 2005  
Decided: November 8, 2005

Before **STEELE**, Chief Justice, **HOLLAND** and **JACOBS**, Justices

**ORDER**

This 8<sup>th</sup> day of November 2005, upon consideration of the briefs on appeal and the record below, it appears to the Court that:

(1) The defendant-appellant, Phil Jones, filed an appeal from the Superior Court’s May 19, 2005 order dismissing his petition for a writ of mandamus. We find no merit to the appeal. Accordingly, we AFFIRM.

(2) Jones was convicted of drug possession in May 1990. He was convicted of second degree robbery and second degree conspiracy in July 1991. As a result of his convictions, Jones was incarcerated from September 1991 to July 1994, when he began serving the probationary portion of his sentences.

(3) In July 1997, Jones pleaded guilty to maintaining a vehicle and second degree conspiracy. He was sentenced to 3 years Level V incarceration on the conviction of maintaining a vehicle and to 2 years Level V incarceration on the conspiracy conviction. The Superior Court sentencing order provided that the 2-year sentence was consecutive to the 3-year sentence, but would be suspended if Jones successfully completed the Key Program.

(4) In 1997, Jones was convicted of second degree assault and was sentenced to 8 years incarceration at Level V, to be suspended after 6 years for decreasing levels of probation. In January 2005, Jones, while serving his sentence on his assault conviction, was placed in the Key Program.

(5) In this appeal, Jones claims that, as a result of the Department of Correction's ("DOC's") failure to place him in the Key Program prior to serving his 2-year sentence on his conspiracy conviction, he was deprived of the benefit of the Superior Court's sentencing order, which provided that that 2-year sentence would be suspended upon completion of the Key Program. Jones claims that he is entitled to have his current sentence on his assault conviction re-calculated by the DOC to account for the 2-year sentence he should not have served. He further claims that the Superior

Court abused its discretion by not granting his petition for a writ of mandamus requiring the DOC to do so.

(6) A writ of mandamus is an extraordinary remedy issued to compel a lower tribunal to perform a duty.<sup>1</sup> As a condition precedent to the issuance of the writ, the petitioner must demonstrate that: he has a clear right to the performance of the duty; no other adequate remedy is available; and the lower tribunal has arbitrarily failed or refused to perform its duty.<sup>2</sup>

(7) Jones is not entitled to mandamus relief because he has not demonstrated a clear right to the performance of a duty. Although Jones argues that he was deprived of the benefit of a full 2-year suspended sentence, that argument is entirely speculative. The sentencing order does not provide for Jones' placement in the Key Program during his previous 3-year sentence, but only at some point during his subsequent 2-year sentence. As such, it is unknown whether (or to what extent) any portion of that 2-year sentence would have been suspended, even assuming that he would have succeeded in completing the Key Program. Under these circumstances, we find no error or abuse of discretion on the part of the Superior Court in dismissing Jones' petition for a writ of mandamus.

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<sup>1</sup> *In re Bordley*, 545 A.2d 619, 620 (Del. 1988).

<sup>2</sup> *Id.*

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

BY THE COURT:

/s/ Myron T. Steele  
Chief Justice