

IN THE SUPREME COURT OF THE STATE OF DELAWARE

IN THE MATTER OF THE §
PETITION FOR A WRIT OF § No. 40, 2002
MANDAMUS BY THOMAS §
L. MOORE. § Def. ID No. 9902006667

Submitted: February 12, 2002

Decided: April 11, 2002

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

ORDER

This 11th day of April 2002, upon consideration of the petition of Thomas L. Moore for a writ of mandamus and the answer and motion to dismiss filed by the State, it appears to the Court that:

(1) In December 1999, Thomas L. Moore pled guilty to Driving under the Influence (fifth offense) and related offenses and was sentenced to three years and eight months at Level V imprisonment, suspended after six months, for a Level IV residential drug treatment program, suspended upon completion of the program, for probation.¹ In September 2000, Moore was found guilty of violation of probation (VOP) and was sentenced. In June 2001, Moore was again found guilty of VOP and was sentenced.

¹*State v. Moore*, Del. Super., No. 9902006667, Goldstein, J. (Dec. 7, 1999).

(2) In July 2001, Moore filed a motion for postconviction relief that challenged his September 2000 VOP conviction and sentence. In August 2001, the Superior Court denied Moore's motion as moot. Moore's appeal from the Superior Court's August 2001 denial of postconviction relief is pending in this Court.² The Superior Court record was filed with the Court in December 2001.

(3) In October 2001, Moore filed a second motion for postconviction relief. Moore's second postconviction motion challenged his 1999 guilty plea and original sentence. In view of the pending appeal in this Court from the denial of Moore's first postconviction motion, the Superior Court, by order dated November 7, 2001, stayed the proceedings with respect to Moore's second postconviction motion. By order dated December 6, 2001, the Superior Court denied Moore's request to lift the stay.

(4) In his petition for a writ of mandamus in this Court, Moore seeks to compel the Superior Court to lift the November 7 stay order. Moore maintains that the two postconviction motions are "legally disconnected." Moore contends that the imposition of a stay is arbitrary and deprives him of access to the court.

²*Moore v. State*, No. 459, 2001 (Del. filed Sept. 21, 2001).

(5) A writ of mandamus is designed to compel a trial court to perform a duty if it is shown that (i) the complainant has a clear right to the performance of the duty; (ii) no other adequate remedy is available; and (iii) the trial court has arbitrarily failed or refused to perform its duty.³ Absent a clear showing that the trial court has arbitrarily failed or refused to act, “this 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.”⁴

(6) In Moore’s case, it is clear that the Superior Court’s imposition of a stay was neither arbitrary nor capricious. Superior Court Criminal Rule 61, which governs postconviction proceedings, specifically provides that “[i]f any part of the record . . . in the case has been removed in connection with an appeal . . . , the judge may stay proceedings [in the Superior Court] until it has been returned.”⁵

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

⁴*Id.* at 620.

⁵Super. Ct. Crim. R. 61(d)(2).

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

BY THE COURT:

/s/ Myron T. Steele
Justice