

IN THE SUPREME COURT OF THE STATE OF DELAWARE

IN THE MATTER OF THE                   §  
PETITION OF KEAVNEY L.               § No. 524, 2006  
WATSON FOR A WRIT OF               §  
MANDAMUS                               §

Submitted: October 17, 2006

Decided: October 27, 2006

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

**ORDER**

This 27th day of October 2006, it appears to the Court that:

(1) The petitioner, Keavney L. Watson, seeks to invoke this Court's original jurisdiction to issue an extraordinary writ of mandamus<sup>1</sup> to compel the Superior Court to correct an illegal sentence imposed upon him for a violation of probation ("VOP"). The State of Delaware, as the real party in interest, has filed an answer requesting that Watson's petition be dismissed. We find that Watson's petition manifestly fails to invoke the original jurisdiction of this Court. Accordingly, the petition must be dismissed.

(2) Watson filed two motions for correction of an illegal VOP sentence in the Superior Court. On July 17, 2006 and September 6, 2006, the Superior Court denied Watson's motions. In its July 17, 2006 order, the

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<sup>1</sup> Del. Const. art. IV, § 11(6); Supr. Ct. R. 43.

Superior Court correctly explained that, under Delaware law, it may reimpose a previously suspended prison term upon a finding that a defendant has committed a VOP, as long as the sentence is within the statutory limits,<sup>2</sup> and that it must impose at least a six-month period of custodial supervision when a period of Level V incarceration totaling one year or more is imposed in order to facilitate the transition of the individual back into society.<sup>3</sup> Instead of filing a timely appeal from either of the Superior Court's decisions, Watson filed the instant petition for a writ of mandamus.

(3) A writ of mandamus is an extraordinary remedy issued by this Court to compel a trial court to perform a duty.<sup>4</sup> As a condition precedent to the issuance of the writ, Watson must demonstrate that: he has a clear right to the performance of the duty; no other adequate remedy is available; and the trial court has arbitrarily failed or refused to perform its duty.<sup>5</sup> “[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.”<sup>6</sup>

(4) There is no basis for the issuance of a writ of mandamus in this case. Watson has failed to demonstrate that the Superior Court has

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<sup>2</sup> *Kelly v. State*, Del. Supr., No. 460, 1996, Hartnett, J. (May 23, 1997).

<sup>3</sup> Del. Code Ann. tit. 11, § 4204(l).

<sup>4</sup> *In re Bordley*, 545 A.2d 619, 620 (Del. 1988).

<sup>5</sup> *Id.*

<sup>6</sup> *Id.*

arbitrarily failed or refused to perform a duty owed to him. Moreover, a petition for a writ of mandamus may not be used as a substitute for a timely-filed notice of appeal.<sup>7</sup>

NOW, THEREFORE, IT IS ORDERED that Watson's petition for a writ of mandamus is DISMISSED.

BY THE COURT:

/s/ Randy J. Holland  
Justice

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<sup>7</sup> *Matushefske v. Herlihy*, 214 A.2d 883, 885 (Del. 1965).