

IN THE SUPREME COURT OF THE STATE OF DELAWARE

IN THE MATTER OF THE §
PETITION OF KEAVNEY § No. 104, 2007
WATSON FOR A WRIT OF §
MANDAMUS §

Submitted: March 20, 2007

Decided: May 8, 2007

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

ORDER

This 8th day of May 2007, upon consideration of Keavney Watson's petition for a writ of mandamus and the State's answer and motion to dismiss, it appears to the Court that:

(1) Petitioner, Keavney Watson, has filed a petition seeking to invoke the original jurisdiction of this Court pursuant to Supreme Court Rule 43. Watson requests this Court to issue a writ of mandamus directing the Superior Court to correct his sentence on a violation of probation (VOP). The State of Delaware has filed an answer and a motion to dismiss the petition. We find that Watson's petition manifestly fails to invoke this Court's original jurisdiction. Accordingly, the petition must be dismissed.

(2) In November 2005, Watson pled guilty to unauthorized use of a vehicle and violation of bond conditions. Watson was sentenced immediately to a total period of two years at Level V incarceration, to be suspended

immediately, with credit for 141 days previously served, for two concurrent one-year terms of probation. In February 2006, Watson was found in violation of the terms of his probation. The Superior Court sentenced him to two years at Level V, with credit for 19 days served, to be followed by six months at Level IV home confinement. A month later, Watson filed his first motion for correction of sentence, which resulted in the Superior Court increasing the amount of credit time toward Watson's sentence. Thereafter, Watson filed unsuccessful motions for correction of sentence in July, August, and October of 2006. Watson appealed the denial of his October motion to this Court, which affirmed the Superior Court's decision on appeal.¹

(3) Watson now has filed the present petition requesting that the Superior Court be ordered to correct his VOP sentence. Watson argues that the sentence imposed by the Superior Court is illegal. He also claims that the assistant Public Defender who represented him at the VOP hearing failed to file an appeal on his behalf from the violation order.

(4) A writ of mandamus is designed to compel an inferior court to perform a duty if it is shown that: the complainant has a clear right to the performance of the duty; that no other adequate remedy is available; and that

¹ *Watson v. State*, 2006 WL 3692586 (Del. Dec. 15, 2006).

the trial court has arbitrarily failed or refused to perform its duty.² A writ of mandamus is not warranted under the present circumstances because Watson had an adequate remedy in the appellate process to seek review of his VOP sentence. He cannot use the extraordinary writ process as a substitute for a timely appeal.³ Moreover, to the extent Watson argues that he did not file a timely appeal from his VOP sentence due to his counsel's ineffectiveness, his exclusive remedy to pursue that claim is a postconviction petition under Superior Court Criminal Rule 61.⁴

NOW, THEREFORE, IT IS ORDERED that Watson's petition for the issuance of an extraordinary writ is DENIED. The State's motion to dismiss is GRANTED.

BY THE COURT:

/s/ Randy J. Holland
Justice

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

³*Matushefske v. Herlihy*, 214 A.2d 883, 885 (Del. 1965).

⁴*See Braxton v. State*, 479 A.2d 831 (Del. 1984) and *Flamer v. State*, 585 A.2d 736, 753 (Del. 1990).