

IN THE SUPREME COURT OF THE STATE OF DELAWARE

IN THE MATTER OF THE §
PETITION OF JAMES A. § No. 141, 2003
WILSON FOR A WRIT OF §
MANDAMUS. § C.A. No. 01M-03-058.

Submitted: April 7, 2003

Decided: May 21, 2003

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

ORDER

This 21st day of May 2003, it appears to the Court that:

(1) James A. Wilson seeks the issuance of a writ of mandamus to compel the Superior Court to rule on (i) a petition for a writ of mandamus that Wilson filed on March 16, 2001 and (ii) a motion for “default of judgment” that Wilson filed on March 17, 2003.¹ The State has filed an answer and has moved to dismiss the petition.

(2) It appears from the Superior Court docket that, by order dated October 30, 2002, the Superior Court granted in part and denied in part the respondents’ motion to dismiss Wilson’s mandamus petition. By order dated December 11, 2002, the Superior Court directed that Wilson should have a new parole hearing within ninety days. Apparently, the parole hearing was scheduled for March 6, 2003, but did not take place on that date. The hearing was held on May 13, 2003.

¹*Wilson v. Williams, et al.*, Super. Ct., C.A. No. 01M-03-058.

(3) A writ of mandamus may issue only when the petitioner can show that (i) he or she has a clear right to the performance of a duty by a trial court; (ii) no other remedy is available; and (iii) the trial court has arbitrarily failed or refused to perform its duty.² “[I]n the absence of a clear showing of an arbitrary refusal or failure 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.”³

(4) Wilson has not demonstrated that the Superior Court has arbitrarily failed or refused to perform a duty. By order dated December 11, 2002, the Superior Court acted upon Wilson’s mandamus petition. Wilson’s motion for default judgment is pending before the Superior Court and will be ruled upon in due course.⁴

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

BY THE COURT:

/s/ Carolyn Berger
Justice

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

³*Id.*

⁴By letter dated April 8, 2003, a copy of which was filed with this Court, the Superior Court informed Wilson that the court would rule upon his motion for “default of judgment” once Wilson’s mandamus petition was decided by the Supreme Court.