

IN THE SUPREME COURT OF THE STATE OF DELAWARE

IN THE MATTER OF THE §
PETITION OF LLOYD ANDERSON § No. 20, 2003
FOR A WRIT OF MANDAMUS §

Submitted: February 4, 2003
Decided: February 28, 2003

Before **VEASEY**, Chief Justice, **WALSH**, and **HOLLAND**, Justices.

ORDER

This 28th day of February 2003, upon consideration of the petition of Lloyd Anderson for a writ of mandamus, as well as the State's answer and motion to dismiss, it appears to the Court that:

(1) The petitioner, Lloyd Anderson, seeks to invoke the original jurisdiction of this Court by requesting that a writ of mandamus be issued to the Superior Court in order to correct his sentence to eliminate the Level IV portion of his sentence. The State has filed a motion to dismiss. The Court has reviewed the parties' respective positions carefully. We find that Anderson's petition manifestly fails to invoke the original jurisdiction of this Court. Accordingly, the petition must be DISMISSED.

(2) The record reflects that the Superior Court sentenced Anderson in 1999 on several drug offenses to serve a total of twelve years at Level V imprisonment, suspended after serving five years for seven years at Level IV

work release and probation. Anderson completed the Level V portion of his sentence in December 2002. He contends that he now is incarcerated illegally because the Department of Correction is unable to place him in a Level IV work release program due to an outstanding INS detainer. He requests this Court to direct the Superior Court to correct his sentence to eliminate the Level IV portion of his sentence so that he may be released to the INS for deportation to Jamaica.

(3) This Court has authority to issue a writ of mandamus only when the petitioner can demonstrate a clear right to the performance of a duty, no other adequate remedy is available, and the trial court arbitrarily has failed or refused to perform its duty.¹ An extraordinary writ will not be issued if the petitioner has another adequate and complete remedy at law to correct the act of the trial court that is alleged to be erroneous.² In this case, as the State points out, Anderson has another adequate remedy at law. He may seek relief from the Superior Court, in the first instance, by filing a motion to correct his sentence pursuant to Superior Court Criminal Rule 35(a). If his request is

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

² *See Canaday v. Superior Court*, 116 A.2d 678, 682 (Del. 1955).

denied, he may seek relief from this Court through the ordinary appellate process.³

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/Joseph T. Walsh
Justice

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