

IN THE SUPREME COURT OF THE STATE OF DELAWARE

IN THE MATTER OF THE §
PETITION OF ADAM T. WENZKE § No. 267, 2007
FOR A WRIT OF MANDAMUS §

Submitted: June 17, 2007

Decided: July 24, 2007

Before **STEELE**, Chief Justice, **JACOBS** and **RIDGELY**, Justices.

ORDER

This 24th day of July 2007, it appears to the Court that:

(1) The petitioner, Adam T. Wenzke, seeks to invoke this Court's original jurisdiction to issue an extraordinary writ of mandamus¹ to compel the Superior Court to direct the Superior Court to modify his sentence so that he might immediately be placed at Level IV Crest or, in the alternative, change his sentence back to what was imposed in January 2005. The State of Delaware has filed an answer requesting that the petition be dismissed. We find that Wenzke's petition manifestly fails to invoke the original jurisdiction of this Court. Accordingly, the petition must be dismissed.

(2) In April 1997, Wenzke pleaded guilty to Robbery in the First Degree, Assault in the Second Degree, and Resisting Arrest. On the robbery conviction, he was sentenced to 15 years at Level V, to be suspended after

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

10 years for 5 years at Level IV Plummer Center or Residential Drug/Alcohol Treatment, in turn to be suspended after 6 months for 4½ years at Level III.² On July 28, 2005, the Superior Court modified Wenzke's sentence for robbery to include the New Visions and Life Skills Program.

(3) On December 14, 2006, Wenzke's TASC case manager wrote to the Superior Court recommending that his sentence be reviewed for placement at Level IV Crest and, upon successful completion, to be followed by Crest Aftercare. On December 18, 2006, the Superior Court issued a modified sentencing order providing that, after 10 years at Level V, Wenzke would enter the Crest Program and, after 6 months, enter Crest Aftercare for 4½ years. In February 2007, the Superior Court denied Wenzke's motion to modify his sentence. Wenzke did not file an appeal from the Superior Court's decision.

(4) A writ of mandamus is an extraordinary remedy issued by this Court to compel a trial court to perform a duty.³ As a condition precedent to the issuance of the writ, Wenzke must demonstrate that: he has a clear right to the performance of the duty; no other adequate remedy is available; and

² Wenzke's other two sentences are not at issue in this appeal.

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

the trial court has arbitrarily failed or refused to perform its duty.⁴ A petition for a writ of mandamus may not be used as a substitute for appellate review.⁵

(5) There is no basis for the issuance of a writ of mandamus in this case. If Wenzke was dissatisfied with the Superior Court's denial of his motion for sentence modification, his remedy was to appeal that decision to this Court. He may not use mandamus as a substitute for appellate review. Moreover, Wenzke seeks to have this Court decide his motion for sentence modification in a particular way. A writ of mandamus may not be used to compel a trial court to decide a matter in a particular way.⁶

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

BY THE COURT:

/s/Henry duPont Ridgely
Justice

⁴ *Id.*

⁵ *Matushefske v. Herlihy*, 214 A.2d 883, 885 (Del. 1965).

⁶ *In re Bordley*, 545 A.2d at 620.