

IN THE SUPREME COURT OF THE STATE OF DELAWARE

IN THE MATTER OF THE                   §  
PETITION OF DAMMEYIN A.           § No. 500, 2007  
JOHNSON FOR A WRIT OF           §  
MANDAMUS                               §

Submitted: October 17, 2007

Decided: October 25, 2007

Before **HOLLAND, JACOBS** and **RIDGELY**, Justices.

**ORDER**

This 25<sup>th</sup> day of October 2007, it appears to the Court that:

(1) The petitioner, Dammeyin A. Johnson, seeks to invoke this Court's original jurisdiction to issue an extraordinary writ of mandamus<sup>1</sup> to compel the Superior Court to issue a decision on his motion for credit time. The State of Delaware has filed an answer requesting that Johnson's petition be dismissed. We find that Johnson's petition manifestly fails to invoke the original jurisdiction of this Court. Accordingly, the petition must be dismissed.

(2) In December 2006, Johnson filed a motion in Superior Court Criminal I.D. No. 9709009665 to modify his sentence to reflect the time he was held before trial in default of bail. Johnson requests this Court to compel the Superior Court to act on his motion.

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

(3) The docket reflects that it has been over ten months since Johnson filed his original motion for credit time. However, an appeal by Johnson to this Court in the same matter (Supreme Court No. 571, 2007) was pending until May 11, 2007, during which time the Superior Court did not have jurisdiction to decide the motion.<sup>2</sup> As such, Johnson's motion has been pending in the Superior Court for only five months.

(4) A writ of mandamus is an extraordinary remedy issued by this Court to compel a lower court to perform a duty.<sup>3</sup> As a condition precedent to the issuance of the writ, the petitioner 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>4</sup> This Court will not issue a writ of mandamus to compel the 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>5</sup>

(5) This Court will not issue a writ of mandamus as a means of controlling the Superior Court's docket. The passage of five months, in and of itself, does not constitute an arbitrary failure or refusal to act on the part of the Superior Court. Because Johnson has failed to demonstrate that he is

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<sup>2</sup> *Eller v. State*, 531 A.2d 948, 951 (Del. 1987).

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

<sup>4</sup> *Id.*

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

entitled to the issuance of a writ of mandamus, his petition must be dismissed.

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

BY THE COURT:

/s/ Jack B. Jacobs  
Justice