## IN THE SUPREME COURT OF THE STATE OF DELAWARE

IN THE MATTER OF THE \$
PETITION OF ROBERT J. \$ No. 518, 2012
MAHAN FOR A WRIT OF \$
PROHIBITION \$

Submitted: October 18, 2012 Decided: November 5, 2012

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

## ORDER

This 5th day of November 2012, upon consideration of the petition of Robert J. Mahan for a writ of prohibition, and the State's response thereto, it appears to the Court that:

- (1) Mahan, an inmate at the Howard R. Young Correctional Institution, requests that this Court issue a writ of prohibition directing Rebecca McBride, the director of the Department of Correction ("DOC") records department, to apply his good time credits to the month during which he works at the West Side Law Library rather than to the following month, which is the DOC's current procedure.
- (2) In its response, the State asserts that the petition should be dismissed, because: (a) Rebecca McBride was never served with a copy of the petition; (b) Mahan has not paid the Supreme Court filing fee; and (c) a

writ of prohibition may not be directed to an individual, but must be directed to a lower court.

- (3) A writ of prohibition is the legal counterpart to the equitable remedy of injunction, and may issue to prevent a lower court from proceeding in a matter where it has no jurisdiction, or to prevent it from exceeding its jurisdiction in a matter that is properly before it.<sup>1</sup> The jurisdictional defect must be manifest on the record.<sup>2</sup> Moreover, the burden is on the petitioner to demonstrate to this Court, by clear and convincing evidence, that the lower court is without jurisdiction in the matter or is attempting to exceed its jurisdiction.<sup>3</sup>
- (4) It is manifest that Mahan has not satisfied his burden. A writ of prohibition is directed to a lower court, not to an individual, and concerns an alleged lack of jurisdiction on the part of that court. Mahan's allegations and his requested remedy do not satisfy the requirements for a writ of prohibition. For that reason, the petition must be dismissed.

<sup>&</sup>lt;sup>1</sup> In re Hovey, 545 A.2d 626, 628 (Del. 1988).

<sup>&</sup>lt;sup>2</sup> *Id*.

<sup>&</sup>lt;sup>3</sup> *Id*. at 629.

NOW, THEREFORE, IT IS ORDERED that the petition for a writ of prohibition is DISMISSED.

BY THE COURT:

/s/ Jack B. Jacobs Justice