IN THE SUPREME COURT OF THE STATE OF DELAWARE

IN THE MATTER OF THE	§	
PETITION OF MELVIN L. MORSE	§	No. 202, 2014
FOR A WRIT OF MANDAMUS	§	

Submitted: May 9, 2014
Decided: May 16, 2014

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

O R D E R

This 16th day of May 2014, upon consideration of the petition of Melvin L. Morse for an extraordinary writ of mandamus, it appears to the Court that:

(1) The petitioner, Melvin L. Morse, seeks to invoke the original jurisdiction of this Court, pursuant to Supreme Court Rule 43, to issue a writ of mandamus directing the Superior Court to review its denial of his Motion to Stay Execution of the Sentence imposed on April 11, 2014. The State of Delaware has filed an answer and motion to dismiss Morse's petition. After careful review, we find that Morse's petition manifestly fails to invoke this Court's original jurisdiction. Accordingly, the petition must be dismissed.

(2) In February 2014, a Superior Court jury found Morse guilty of one count each of reckless endangering in the first degree, reckless endangering in the second degree, and assault in the third degree, as well as three counts of endangering the welfare of a child. On the day of sentencing, April 11, 2014, Morse filed a Motion for Release Pending Appeal and a Motion to Stay Execution

of the Sentence. Morse sought to stay execution of his sentence until the Superior Court could hold a fact-finding hearing to examine whether the Department of Correction could handle Morse's preferred course of treatment for his prostate cancer and thyroid condition. The Superior Court denied both motions and imposed a total sentence of ten years at Level V incarceration, suspended after three years for one year at Level III probation.

(3) On April 22, 2014, Morse appealed from his conviction and sentence, and filed a Motion for Certificate of Reasonable Doubt.[1] He also filed this Petition for Writ of Mandamus, claiming the Superior Court had disregarded a tangible threat to his health and his life by denying his Motion to Stay Execution of the Sentence. Morse asks this Court to issue a writ of mandamus directing the Superior Court to review its denial of his Motion to Stay Execution of the Sentence.

(4) A writ of mandamus will issue only if the petitioner can show: (i) a clear right to the performance of a duty; (ii) that no other adequate remedy is available; and (iii) the Superior Court has arbitrarily failed or refused to perform its duty.[2] This Court "will not issue a writ of mandamus to compel a trial court to

[1] *Morse v. State*, No. 200, 2014 (Del.).

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

perform a particular judicial function, to decide a matter in a particular way, or to dictate the control of its docket."[3]

(5) There is no basis for the issuance of a writ of mandamus here. Morse has not shown that the Superior Court arbitrarily failed or refused to perform a duty owed to him by denying his Motion to Stay Execution of the Sentence for an evidentiary hearing on whether the Department of Correction could provide his preferred course of medical treatment for his prostate cancer and thyroid condition.

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

BY THE COURT:

/s/ Jack B. Jacobs
Justice

[3] *Id.*