

**IN THE SUPERIOR COURT OF THE STATE OF DELAWARE
IN AND FOR NEW CASTLE COUNTY**

STANLEY E. WASHINGTON,)

Petitioner,)

v.)

C.A. No. 05M-10-076 WCC

DEPARTMENT OF CORRECTION,)

STANLEY W. TAYLOR,)

COMMISSIONER, ATTORNEY)

GENERAL'S OFFICE and)

JANE M. BRADY,)

Respondent.)

Submitted: February 8, 2006

Decided: May 31, 2006

MEMORANDUM OPINION

On Respondent's Motion to Dismiss. GRANTED

Eileen Kelly; Deputy Attorney General, Carvel State Building; 820 N. French St.;
Wilmington, Delaware 19801. Attorney for Respondents.

Stanley E. Washington; Delaware Correctional Center; 1811 Paddock Road;
Smyrna, Delaware 19977. *Pro Se* Petitioner.

CARPENTER, J.

Introduction

Before this Court is the Motion to Dismiss filed by the Department of Correction; Stanley W. Taylor, Commissioner; Attorney General's Office and Jane M. Brady (collectively, the "Respondents"). Upon review of the record in this matter, this Court hereby grants the Motion.

Facts

Stanley E. Washington is currently an inmate being housed at the Delaware Correctional Center in Smyrna, Delaware. While the facts provided are devoid of much substance, it appears that during his incarceration, Mr. Washington was brought before a disciplinary proceeding for an alleged infraction of the Correction Code of Penal Discipline (the "Prison Policy"). Mr. Washington asserts Staff Lt. Williams' participation at that hearing violated his Constitutional rights since his previous interaction with Staff Lt. Williams created a bias that prevented the lieutenant from being impartial. He further asserts his rights were violated because the written decision of an appeal he filed, presumably of the same matter, was not issued by the Department of Correction (DOC) within the ten day standard set forth in the Prison Policy.¹ As a result of these two instances, Mr. Washington has filed a Petition for

¹It is not clear if the decision was never issued, or if the decision was issued by the Respondents and it was simply not issued within the ten days. However, for purposes of this opinion, the determination of this fact is not relevant.

a Writ of Mandamus seeking this Court to compel the Respondents to comply with the Prison Policy. Currently before this Court is the Motion to Dismiss filed by the Respondents with respect to that petition.

Standard of Review

A motion to dismiss, filed pursuant to Superior Court Civil Rule 12(b)(6), must be decided solely upon the allegations set forth in the complaint,² and the Court must accept all allegations within the complaint as true.³ If a plaintiff may recover under any reasonably conceivable set of circumstances, a motion to dismiss must be denied.⁴ In other words, only if the plaintiff could prevail under no set of facts inferred from the pleadings may the court dismiss the complaint for lack of merit, as a matter of law or fact.⁵

A motion to dismiss will be treated as a motion for summary judgment if matters are presented to the court which are outside of the complaint and pleadings.⁶

²See *Growbow v. Perot*, 539 A.2d 180, 187 (Del. 1988).

³*State Use of Certain-Teed Products Corp. v. United Pacific Ins. Co.*, 389 A.2d 777, 778 (Del. Super. Ct. 1983).

⁴*Kofron v. Amoco Chems. Corp.*, 441 A.2d 226, 227 (Del. 1982).

⁵*Diamond State Tel. Co. v. Univ. of Del.*, 269 A.2d 52, 58 (Del. Super. Ct. 1970).

⁶*Coleman v. PricewaterhouseCoopers LLP*, 2003 WL 22765857 (Del. Super. Ct.), *rev'd on other grounds*; see also *Mell v. New Castle County*, 835 A.2d 141, 144 (Del. Super. Ct. 2003) (If either party relies on matters outside of the pleadings in advancing their respective arguments, and if those documents are offered to establish the truth of their content, the court must convert

Here, attached to Mr. Washington's response and reply are additional documents, including various letters drafted by Mr. Washington; one page of what appears to be a discipline hearing form, seemingly signed by Staff Lt. Williams on November 14, 2003; and the Prison Policy. These documents have been attached in an attempt to advance Mr. Washington's petition with respect to the bias he allegedly suffered. Accordingly, the motion to dismiss could be treated as a summary judgment motion pursuant to Superior Court Civil Rule 56.⁷ Under this standard, the Court would review the record and determine if a genuine issue of material fact exists, or if a party is entitled to judgment as a matter of law.⁸ The Court finds that under either burden, the Respondents prevail as a matter of law, and as such, the Court will consider the documents submitted by the Petitioner.

Discussion

To allow a court to issue a mandamus, the petitioner must establish that he has a clear right which requires the court to compel the performance of a duty by a public

the motion to dismiss to a motion for summary judgment. (citations omitted)).

⁷*Parker v. Kearney*, 2000 WL 1611119 (Del. Super. Ct.), at *4. (A motion to dismiss was treated as such, despite additional documents being provided to the Court, since the petition had referenced the documents and they should have been attached to the petition as exhibits.)

⁸*Mell*, 835 A.2d at 144.

official, agency or inferior court,⁹ and he must also establish the lack of any other adequate remedy.¹⁰ The issuance of a mandamus is not a matter of right but falls within judicial discretion, and if either of these two elements are not present, the court shall not issue the mandamus.¹¹ Further, if a mandamus is requested solely because a prison policy is not adhered to, the court will defer to the discretion of the DOC.¹²

Here, Mr. Washington is seeking a mandamus to force the Respondents to adhere to Prison Policy Section 300.236,¹³ which indicates hearings for major offenses must be conducted by an impartial hearing officer, and Section 300.246¹⁴

⁹*Clough v. State*, 686 A.2d 158, 159 (Del. 1996).

¹⁰*In re Birowski*, 1997 WL 127985 (Del. Super. Ct.), at *2; *In re Jones*, 763 A.2d 91 (Del. 2000).

¹¹*Guy v. Greenhouse*, 637 A.2d 287 (Del. 1993).

¹²*Ross v. Dep't of Corr.*, 722 A.2d 815, 820 (Del. Super. Ct. 1998).

¹³Prison Policy Section 300.236 states, in its entirety:

All hearings for major offenses shall be conducted by an impartial Hearing Officer, who shall not have had supervisory responsibility over the accused inmate during the six month period immediately preceding the hearing. A hearing officer shall be disqualified to preside over hearings in which he witnessed the incident in question, was involved in preparation of the charge, or is otherwise biased against the inmate who is the subject of the hearing. The hearing officer shall be of a rank no lower than Lieutenant.

¹⁴It is presumed this is the section of the Prison Policy which is applicable, since this section deals with major offenses. As such, Section 300.246 states, in its entirety:

All appeals shall be heard by the Commissioner, Bureau Chief, or their designee. The appeal decision shall be in writing and should be rendered within ten days of receipt of the appeal. A copy of the decision shall go to the inmate.

which states that an appeal decision should be rendered within ten days of receipt.¹⁵ However, Mr. Washington has failed to establish that there is no adequate remedy at law available to him for either claim, nor that a violation of the Prison Policy here has even occurred. As such, the Court will not grant his mandamus request.

First, Mr. Washington is seeking a mandamus to correct an alleged violation of his Fourteenth Amendment right to equal protection and due process, arguing the Respondents failed to comply with the disciplinary hearing procedure. However, since Mr. Washington asserts a violation of his Constitutional rights, the proper remedy is through a 42 U.S.C. § 1983 action in the United States District Court, and not the issuance of a mandamus by this Court.¹⁶ Because Mr. Washington has failed to meet one of the two required prongs for an issuance of a mandamus in failing to show that a mandamus is his sole avenue for relief, such extraordinary relief is not appropriate.

¹⁵Mr. Washington appears to also seek removal from his prison file any reference or document pertaining to any disciplinary hearing involving Staff Lt. Williams, however, this request was first indicated in his response to the Respondents' motion, and was not included within the Petition. As such, the Court will not address this matter further.

¹⁶*Parker*, 2000 WL 1611119, at *5. (“[P]etitioner claims various constitutional violations occurred as a result of the denial of his job. The appropriate remedy for these violations is an action pursuant to 42 U.S.C. § 1983. Thus, petitioner has an adequate remedy at law, and the mandamus action is inappropriate.”); see also *Ward v. Hennessy*, 854 A.2d 1159 (Del. 2004); *Wilson v. S.C.I. Classification Dept.*, 2005 WL 1953042 (Del. Super. Ct.).

Second, other than Mr. Washington's unsubstantiated assertions, there is nothing to suggest to the Court that Staff Lt. Williams was an inappropriate hearing officer. In an attempt to correct this deficiency, the Petitioner attached to his response to the Respondent's motion a document that appears to be a portion of a report of a prior incident involving the Petitioner where he began using profanity, was disrespectful to those present, and was removed from the hearing with the assistance of other officers. Even if the Court assumes that the signature on that form is that of Staff Lt. Williams, which is not easily discernable, there is nothing in the form to suggest that the action of the lieutenant was inappropriate or to suggest a bias against the Petitioner. If the Court were to accept the Petitioner's argument, it would create an atmosphere where inmates would intentionally engage in adverse conduct with supervising personnel simply to get them disqualified for future disciplinary hearings. The Court has no intention of giving such power to those who are incarcerated.

Finally, the Court notes that, in addition to failing to meet the sole remedy requirement as indicated above, Section 300.246 is not a mandatory provision, and a mandamus cannot be issued to compel a discretionary act.¹⁷ Throughout the Prison Policy the word "shall" is used to indicate mandatory provisions. Specifically,

¹⁷*Birowski*, 1997 WL 127985.

Section 300.246 indicates that the appeal *shall* be heard by certain parties, and *should* be issued within ten days. This distinction is important since the word “should” connotes an advisory statement allowing discretion, not a mandatory statement requiring adherence. Thus, while the Prison Policy mandates an appeal to be heard by certain parties, it only suggests that the reasonable period for the DOC to file appeal decisions is ten days. A mandamus cannot be issued by this Court to compel a discretionary act, and still further, when discretion is warranted, the courts defer to prison officials in administering disciplinary rules and in dealing with grievances.¹⁸ Here, the Court will do the same with respect to the procedural aspect of the dispensing of an appeal filed by an inmate, leaving the DOC with the final say of when to issue such decisions.¹⁹

Conclusion

The Petitioner has failed to show the lack of an adequate remedy at law for either of his complaints, and seeks a mandamus for a discretionary act with respect to his assertion relating to the appeal process. A mandamus is an extremely limited

¹⁸*Ross*, 722 A.2d at 819. (“Courts are reluctant to review and supervise the administration of prisons due to the very nature of prison problems. The administration of correctional facilities is complex, intractable, and not readily susceptible to judicial oversight.”)

¹⁹It should be noted that Prison Policy Section 300.147 requires a 72 hour stay of any sanction issued pursuant to a disciplinary hearing to allow an inmate to file an appeal. If an appeal is filed, Section 300.151 extends the stay until the appeal decision is rendered.

remedy, and this Court cannot issue a mandamus if there are other means for a petitioner to seek relief, nor if the act to be compelled is discretionary.

For the foregoing reasons, the Motion to Dismiss is hereby GRANTED.

IT IS SO ORDERED.

Judge William C. Carpenter, Jr.