IN THE SUPREME COURT OF THE STATE OF DELAWARE

IN THE MATTER OF THE	§	
PETITION OF HARRY	§	No. 242, 2011
ANDERSON FOR A WRIT OF	§	
MANDAMUS	§	

Submitted: May 27, 2011
Decided: June 14, 2011

Before **HOLLAND**, **BERGER** and **JACOBS**, Justices

O R D E R

This 14th day of June 2011, it appears to the Court that:

(1) The petitioner, Harry Anderson, seeks to invoke this Court's original jurisdiction to issue an extraordinary writ of mandamus[1] directing the Superior Court to grant his motion to dismiss or correct sentence in Cr. ID No. 0511001605. The State of Delaware has filed an answer requesting that Anderson's petition be dismissed. We find that Anderson's petition manifestly fails to invoke the original jurisdiction of this Court. Accordingly, the petition must be dismissed.

(2) The record before us reflects that, in March 2006, Anderson pleaded guilty to Assault in the Second Degree. He was sentenced to 8 years of Level V incarceration, with credit for 167 days, to be suspended after 1 year for 2 years of Level III probation, in turn to be suspended after 1 year

[1] Del. Const. art. IV, §11(5); Supr. Ct. R. 43.

for 1 year of Level II probation. Anderson subsequently was found to have committed a violation of probation ("VOP") on two occasions. Anderson was found to have committed a third VOP at a hearing on September 22, 2010. He was sentenced, effective June 5, 2010, to 6 years at Level V, to be suspended after 1 year and 1 month for 6 months of Level IV Work Release, to be followed by 12 months of Level III probation. Anderson filed an appeal from his VOP sentence in this Court in No. 663, 2010, which remains pending.

(3) The Superior Court docket reflects that, on January 13, 2011, following the filing of his answering brief in No. 663, 2010, Anderson filed a motion to dismiss or correct sentence in the Superior Court. In his petition for a writ of mandamus, Anderson claims that the Superior Court has failed to act on that motion. He requests this Court to order the Superior Court to grant his motion.

(4) A writ of mandamus is an extraordinary remedy issued by this Court to compel a trial court to perform a duty.[2] As a condition precedent to the issuance of the writ, the petitioner must demonstrate that a) he has a clear right to the performance of the duty; b) no other adequate remedy is available; and c) the trial court has arbitrarily failed or refused to perform its

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

duty.[3] This Court will not compel the Superior Court to decide a matter in a particular way.[4]

(5) There is no basis for the issuance of a writ of mandamus in this case. The record reflects that Anderson's motion to dismiss or correct sentence was filed in the Superior Court while his appeal regarding the same sentence was pending in this Court. The record has been transferred to this Court for purposes of Anderson's appeal. Thus, Anderson has failed to demonstrate that the Superior Court has arbitrarily failed or refused to decide his motion. Moreover, Anderson cannot demonstrate that no other remedy is available to him, since his appeal regarding his sentence is currently pending in this Court. Finally, this Court will not compel the Superior Court to decide a matter in a particular way, as Anderson has requested.

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

BY THE COURT:

/s/ Carolyn Berger
Justice

[3] Id.
[4] Id.