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

JASON MYERS,	)
Petitioner,	)
v.	) C.A. No. N12M-12-115 EMD
HRYCI WARDEN PHIL MORGAN, HRYCI CAPTAIN CAROL JEFFERSON, HRYCI LT. MARY MATTHEWS, and DOC BUREAU CHIEF MIKE DELOY, Respondents.	) ) ) ) )
Submitted: Decided:	March 26, 2013 June 27, 2013

Upon Respondents' Motion to Dismiss *GRANTED* 

Jason Myers, Smyna, Delaware, pro se.

Stuart B. Drowos, Deputy Attorney General, Wilmington, Delaware, *Attorney for Respondents*.

# DAVIS, J.

### Introduction

This case involves a petition for a writ of mandamus (the "Petition"). On or about January 8, 2013, Petitioner Jason Myers filed the Petition, seeking – among other things – the issuance of a formal apology; resurrection of certain grievances; creation of an independent commission replacing the current inmate grievance committee ("IGC"); and a meeting with the DOC commissioner, Bureau Chief Mike DeLoy and Warden Phil Morgan. Before the Court is the motion to dismiss (the "Motion") filed by Respondents

Warden Morgan, Captain Carol Jefferson, Lt. Mary Matthews and Bureau Chief DeLoy (collectively, the "Respondents"). The Respondents seek dismissal of the Petition under Superior Court Civil Rule 12(b)(6). The Respondents contend that Mr. Myers, through the Petition, fails to state a claim upon which relief can be granted. For the reasons stated herein, the Motion is **GRANTED**.

#### FACTUAL AND PROCEDURAL BACKGROUND

On or about January 8, 2013, Mr. Myers, an inmate formerly housed at Howard R. Young Correctional Institution ("HRYCI") and now housed at James T. Vaughn Correctional Center ("JTVCC") filed the Petition. The Petition names Warden Morgan, Captain Jefferson, Lt. Matthews and Bureau Chief DeLoy as respondents.

Through the Petition, Mr. Myers asks that this Court issue writ of mandamus for a wide variety of relief, including, but not limited to:

- (a) Having the Court address Lt. Farmer and DOC staff and telling them that "threats nor intimidation will be tolerated and requiring Lt. Farmer to formally apologize to Mr. Myers;
- (b) Reinstating certain grievances because such grievances had been determined to be untimely;
- (c) Reinstating certain grievances because such grievances were determined to be "non-grievable nor not permitted" and allowing such grievances to "continue to the first stage or their next stage of the HRYCI Grievance Process;"
- (d) Appointing an outside board to take over the IGC because the IGC as presently situated is violating inmates' First Amendment rights and rights to "Due Process;"
- (e) Requiring DOC to follow its own rules regarding the status of grievances;
- (f) Requiring DOC to provide inmates with complete copies of their grievances so that the inmates are allowed a fair opportunity to read investigative statements and make a "decision based on all of the facts;"

- (g) Requiring DOC to replace or change the IGC chairperson every two years and, therefore, "not allowing any one person or staff to become displacent with so much authoritative discretion;"
- (h) Imposing and mandating that an outside investigation committee be created to take the place of the ICG, or reforming and reconstructing the HRYCI's grievance system; and
- (i) Requiring a "sit down meeting" among Mr. Myers, the DOC commissioner, Bureau Chief DeLoy and Warden Morgan.

On or about February 25, 2013, the Respondents filed the Motion. The Motion seeks dismissal of the Petition, arguing that Mr. Myers has failed to establish a right to a writ of mandamus. Moreover, Respondents argue dismissal is appropriate because Mr. Myers failed to exhaust his administrative remedies before filing the Petition.

## STANDARD OF REVIEW

A motion to dismiss must be decided solely upon the allegations set forth in the complaint.<sup>1</sup> In determining the merits of a motion to dismiss pursuant to Rule 12(b)(6), the Court must accept all allegations within the complaint as true.<sup>2</sup> If a plaintiff may recover under any reasonably conceivable set of circumstances, a motion to dismiss must be denied.<sup>3</sup> The Court may dismiss a complaint for lack of merit, as a matter of law or fact only if the plaintiff could prevail under no set of facts inferred from the pleadings.<sup>4</sup> In deciding a motion to dismiss with respect to a petition for a writ of mandamus, the Court must consider the standards a party must meet in obtaining the writ.<sup>5</sup>

<sup>&</sup>lt;sup>1</sup> See Growbow v. Perot, 539 A.2d 180, 187 (Del. 1988).

<sup>&</sup>lt;sup>2</sup> State Use of Certain-Teed Products Corp. v. United Pacific Ins. Co., 389 A.2d 777, 778 (Del. Super. Ct. 1983).

<sup>&</sup>lt;sup>3</sup> Kofron v. Amoco Chems. Corp., 441 A.2d 226, 227 (Del. 1982).

<sup>&</sup>lt;sup>4</sup> Diamond State Tel. Co. v. Univ. of Del., 269 A.2d 52, 58 (Del. Super. Ct. 1970).

<sup>&</sup>lt;sup>5</sup> Mell v. New Castle County, 838 A.2d 141, 145 (Del. Super. Ct. 2003).

#### **DISCUSSION**

This Court has the power to issue a writ of mandamus under 10 Del. C. § 564.<sup>6</sup>

A writ of mandamus is an extraordinary remedy, which this Court will not issue unless plaintiff establishes a clear right to the performance of a duty, and that no other adequate remedy is available.<sup>7</sup>

The issuance of a mandamus falls within judicial discretion and is not a matter of right. This Court may issue a mandamus "to an inferior court, public official or agency to compel the performance of a duty to which the petition has established a right."

Further, "when directed to an administrative agency or public official, mandamus will issue only to require performance of a clear legal or ministerial duty."

Thus, this Court is not to issue a mandamus to compel a discretionary act. If a petitioner cannot show a clear right to the requested performance of a duty, or there is any doubt as to a petitioner's right, this Court shall not issue a mandamus. Lastly, with respect to prison policies, this Court will only intervene in the limited instances where an inmate's statutory or constitutional rights are affected. A writ of mandamus is not an appropriate tool to merely assure a prison policy is being adhered to. 14

The Petition does not state a basis upon which relief can be granted. There is a statutory provision on "Discipline" which provides that the DOC is to promulgate rules

<sup>&</sup>lt;sup>6</sup> That section provides, in relevant part, that "if the Court orders that the plaintiff is entitled to the relief prayed for or any part thereof, a peremptory writ of mandamus shall issue forthwith..." 10 *Del. C.* § 564. <sup>7</sup> *Schagrin Gas Co. v. Evans*, 418 A.2d 997 (Del. 1980).

<sup>&</sup>lt;sup>8</sup> Guy v. Greenhouse, 637 A.2d 287 (Del. 1993).

<sup>&</sup>lt;sup>9</sup> Clough v. State, 686 A.2d 158, 159 (Del. 1996).

<sup>&</sup>lt;sup>10</sup> Guy, 637 A.2d at 287.

<sup>11</sup> Id

<sup>&</sup>lt;sup>12</sup> Walls v. Williams, 2006 WL 1133563, \*1 (Del. Super. Ct. Mar. 28, 2006).

<sup>&</sup>lt;sup>13</sup> *Id*.

<sup>&</sup>lt;sup>14</sup> Ross v. Dep't of Corr., 722 A.2d 815, 820 (Del. Super. Ct. 1998).

and regulations relating to discipline and provide the prisoners with access to those portions of the disciplinary rules that apply to them. <sup>15</sup> Pursuant to this provision, DOC has promulgated Policy 4.4 that deals with grievances. <sup>16</sup> Prison policies, such as the one at issue here, are implemented by DOC pursuant to this legislative directive because DOC has the expertise and experience to better manage the day to day activities within the prisons. Courts defer to both the legislature and executive branches with respect to policies within the prison institutions, including discipline guidelines, grievance procedures and the administration of inmates in general. <sup>17</sup> The Court is not in a position to, nor does it intend to, micro manage the prison systems. The Court's obligation is to simply protect inmates' constitutional or statutory rights, and it will not assume the role of an administrator of the numerous grievances filed by unhappy prisoners. <sup>18</sup> Since the Petitioner does not have a statutory right under Policy 4.4 that could be infringed upon by the Defendants, this Court will not intervene and his Petition will not be granted.

Mr. Myers does make reference to certain alleged constitutional rights under the First Amendment and, presumable, to Fourteenth Amendment, rights to "Due Process," of the United States Constitution. However, Mr. Myers fails to provide how, as an inmate, he is entitled to a specific form of grievance process under the First and Fourteenth Amendment. Mr. Myers is seeking extraordinary relief from this Court and

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<sup>&</sup>lt;sup>15</sup> 11 Del. C. § 6535.

<sup>&</sup>lt;sup>16</sup> In pertinent part, 11 *Del. C.* § 6536 states "... the Department shall promulgate rules and regulations for the maintenance of good order and discipline in the facilities and institutions for the Department, including procedures for dealing with violations...."

<sup>&</sup>lt;sup>17</sup> Ross, 722 A.2d at 820.

<sup>&</sup>lt;sup>18</sup> *Id* 

<sup>&</sup>lt;sup>19</sup> Petition at ¶ 22.

must demonstrate that his right to the relief is not doubtful.<sup>20</sup> Mr. Myers does not do that through the Petition.

In fact, the Petition is so difficult to decipher, in parts, that the Respondents believe that Mr. Myers seeks production of certain documents and manuals. However, in reviewing the prayer for relief portion of the Petition, <sup>21</sup> the Court does not see such requests. Mr. Myers seeks an overhaul of the IGC, an overhaul of the DOC grievance Process, a formal apology from certain DOC employees, a meeting with the DOC commissioner, Bureau Chief DeLoy and Warden Morgan. The Court is unaware of any justifiable reason why Mr. Myers is entitled to such relief under Delaware statutory law, the Delaware Constitution or the United States Constitution. The grievance process appears to be an administrative process established by DOC. Basically, Mr. Myers requests a mandamus compelling the Respondents to follow Policy 4.4. The Court, without more, will not interfere here to make sure that an internal policy or process – one that is discretionary in the first instance — is being followed by DOC.

#### **CONCLUSION**

Mr. Myers has failed to demonstrate infringement of a clear constitutional or statutory right and Policy 4.4 allots discretion in the hands of DOC with dealing with inmates' grievances. Accordingly, the Motion is **GRANTED** and the Petition is **DISMISSED** for failing to state a claim upon which relief can be granted.

IT IS SO ORDERED.

/s/ Eric M. Davis
Eric M. Davis

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<sup>&</sup>lt;sup>20</sup> Milford 2<sup>nd</sup> St. Players v. Delaware Alcoholic Beverage Control Comm'n, 552 A.2d 855 (Del. Super. Ct. 1988)

Petition at ¶¶ 20-27.

Judge