IN THE SUPREME COURT OF THE STATE OF DELAWARE

L. ROYAL FISHER,	§	
	§	No. 276, 2005
Petitioner Below-	§	
Appellant,	§	
	§	Court Below—Superior Court
v.	§	of the State of Delaware
	§	in and for New Castle County
THOMAS CARROLL, et al.,	§	C.A. No. 05M-05-053
	§	
Respondents Below-	§	
Appellees.	§	

Submitted: January 13, 2006
Decided: February 28, 2006

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

O R D E R

This 28th day of February 2006, upon consideration of the briefs on appeal and the record below, it appears to the Court that:

(1) The petitioner-appellant, L. Royal Fisher, an inmate incarcerated at the Delaware Correctional Center ("DCC") in Smyrna, Delaware, filed a petition in the Superior Court seeking the issuance of a

writ of mandamus.[1] Fisher appeals from the Superior Court's June 1, 2005 order dismissing his petition as factually and legally frivolous.[2]

(2) The record reflects that, in August 2001, Fisher concealed part of an unfinished portion of his chicken salad lunch in his clothing. According to Fisher, he saved the chicken salad to eat prior to taking some prescription medication at the prison infirmary. During a random search, the chicken salad was discovered and Fisher was charged with violating three DCC rules---possession of non-dangerous contraband; creating a health, safety or fire hazard; and failing to obey an order.

(3) Fisher pleaded not guilty to the charges. On January 27, 2002, Fisher was found guilty of the charges at a disciplinary hearing presided over by Staff Lieutenant Patrick Roberts, acting as the Warden's designee. Roberts imposed a sanction of 15 days loss of all privileges, but suspended the sanction of a written reprimand pending an appeal by Fisher. On April 1, 2002, Staff Lieutenant Bernie Williams heard Fisher's appeal and affirmed Roberts' findings. The stay was lifted and the written reprimand was placed in Fisher's institutional file.

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[1] Because Fisher's filing requested that the Superior Court direct prison officials to remove a disciplinary report from his prison file, the Prothonotary deemed it to be a petition for a writ of mandamus. DEL. CONST. art. IV, § 11(6); SUPR. CT. R. 43. In his filing, Fisher also requested monetary damages.

[2] 10 *Del. C.* §§ 8801(5) and 8801(6).

(4) Fisher appealed Williams' decision to the Bureau of Prisons. On January 10, 2003, Fisher received the decision of Anthony Rendina, the Bureau Chief's designee, who removed the finding of guilt as to the charge of creating a health, safety or fire hazard, but affirmed the remainder of the findings.

(5) A writ of mandamus is an extraordinary remedy issued by a court to compel a lower tribunal to perform a duty.[3] As a condition precedent to the issuance of the writ, Fisher must demonstrate that: (i) he has a clear right to the performance of the duty; (ii) no other adequate remedy is available; and (iii) the lower tribunal has arbitrarily failed or refused to perform its duty.[4]

(6) The Superior Court properly dismissed Fisher's petition as factually and legally frivolous. Fisher did not deny having the chicken salad in violation of DCC rules. His defense that he was justified in violating the rules was heard at three different levels within the prison disciplinary system and was found to be without merit. Fisher has failed to demonstrate a clear right to the performance of a duty on the part of prison officials and an arbitrary failure or refusal to perform that duty. Fisher also has failed to

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

show that the Superior Court either erred or abused its discretion in dismissing his petition.[5]

NOW, THEREFORE, IT IS ORDERED that the judgment of the Superior Court is **AFFIRMED**.

BY THE COURT:

/s/ Jack B. Jacobs
Justice

[5] Even if Fisher's pleading is deemed to be a civil complaint for money damages, it still was properly dismissed as factually and legally frivolous. Although not cited by the Superior Court as a basis for dismissal, Fisher's complaint also was filed beyond the statute of limitations governing personal injury actions. 10 *Del. C.* § 8119.