

IN THE SUPREME COURT OF THE STATE OF DELAWARE

IN THE MATTER OF THE §
PETITION OF JAMES § No. 310, 2000
ARTHUR BIGGINS FOR A §
WRIT OF MANDAMUS. §

Submitted: July 12, 2000

Decided: July 26, 2000

Before **VEASEY, Chief Justice, WALSH and BERGER**, Justices.

ORDER

This 26th day of July 2000, upon consideration of the petition for a writ of mandamus filed by James Arthur Biggins (“Biggins”) and the answer and motion to dismiss filed by the State of Delaware,¹ it appears to the Court that:

(1) Biggins is a prisoner at the Delaware Correctional Center. In February 2000, Biggins filed, in the Superior Court, a writ of mandamus directed to correctional authorities. Biggins complained about (i) a disciplinary transfer; (ii) the prison law library’s photocopy and inmate attendance policies; and (iii) deductions that were made from inmates’ prison accounts.

¹ On July 20, 2000, Biggins filed a response to the State’s motion to dismiss. The Court has not considered Biggins’ unsolicited response. See Supr. Ct. R. 43(b)(ii)

(2) By order dated May 3, 2000, the Superior Court summarily dismissed Biggins' disciplinary transfer claim as legally frivolous.² The Superior Court allowed service of process to issue with respect to Biggins' other two claims, on the condition that Biggins file an amended petition.³ Biggins filed an amended petition as directed by the Superior Court. The petition was served upon the respondent-correctional authorities on June 1, 2000.

(3) In his petition for a writ of mandamus in this Court, Biggins appears to seek review of the Superior Court's May 3 dismissal of his disciplinary transfer claim. This Court may issue a writ of mandamus to compel a trial court to perform a duty, but only when the complainant has a clear right to the performance of the duty, no other adequate remedy is available, and the trial court has failed or refused to perform its duty.⁴

(4) There is no basis for the issuance of a writ of mandamus in this case. The May 3 order of the Superior Court, dismissing only one of

(providing that "unless the Court otherwise directs, no further submissions of the parties shall be accepted").

² See 10 *Del. C.* § 8803(b) (in proceedings *in forma pauperis*, the court shall dismiss the complaint if the court finds that the action is factually frivolous, malicious, and/or legally frivolous).

³ *Biggins v. Dept. of Correction*, Del. Super., C.A. No. 00M-02-016, Graves, J., 2000 WL 710093 (May 3, 2000) (ORDER).

⁴ *In re Bordley*, Del. Supr., 545 A.2d 619, 620 (1988).

Biggins' three claims, is not the final order in the Superior Court case. The order is instead an interlocutory ruling. Mandamus does not serve to review an interlocutory ruling that can be reviewed on appeal once a final judgment is entered in the case.⁵

NOW, THEREFORE IT IS ORDERED, that the State's motion to dismiss is GRANTED. Biggins' petition for a writ of mandamus is DISMISSED.

BY THE COURT:

/s/ E. Norman Veasey
Chief Justice

⁵ *Williams v. Marvel*, Del. Supr., 158 A.2d 486, 487 (1960).