

IN THE SUPREME COURT OF THE STATE OF DELAWARE

DEAN C. BLACK,	§
	§
Petitioner Below-	§ No. 163, 2004
Appellant,	§
	§ Court Below—Superior Court
v.	§ of the State of Delaware,
	§ in and for New Castle County
THOMAS CARROLL,	§ C.A. No. 04M-04-031
	§
Respondent Below-	§
Appellee.	§

Submitted: June 17, 2004  
Decided: August 19, 2004

Before **STEELE**, Chief Justice, **HOLLAND**, and **JACOBS**, Justices.

**ORDER**

This 19<sup>th</sup> day of August 2004, upon consideration of the appellant’s opening brief, the State’s motion to affirm and the record below, it appears to the Court that:

(1) The appellant, Dean Black, filed this appeal from the Superior Court’s order dismissing his petition for a writ of mandamus. The State has filed a motion to affirm the Superior Court’s judgment on the ground that it is manifest on the face of Black’s opening brief that the appeal is without merit. We agree. Accordingly, we affirm the Superior Court’s judgment.

(2) The record reflects that Black was convicted in 1985 of two counts of attempted first degree rape and was sentenced to a total period of

25 years imprisonment to be suspended after serving 10 years for 15 years of probation. In 1997, the Superior Court found Black in violation of the terms of his probation and sentenced him to serve 10 years imprisonment to be suspended after 9½ years for Level IV work release. Black filed a motion for correction of sentence in 2003, arguing that recent legislative changes to the probation statute,<sup>1</sup> which were effective June 2003, provided a basis for modification of his 10-year probationary sentence. The Superior Court denied Black's motion for modification of sentence. He did not appeal that ruling.

(3) Instead, Black filed a petition for a writ of mandamus directed to Thomas Carroll, warden of the Delaware Correctional Center, to compel Carroll to file a petition to reduce the length of Black's sentence. Black argued that the June 2003 amendments to 11 Del. C. § 4333 created a legal duty requiring Warden Carroll to file a motion to modify his sentence. The Superior Court held that the Department of Correction had no duty to file such a motion on Black's behalf. This appeal followed.

(4) A writ of mandamus is a command that the Superior Court, in its discretion, may issue to a lower court, public official, or agency to compel the performance of a legal duty to which the petitioner has

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<sup>1</sup> 11 *Del. C.* § 4333.

established a clear legal right and no other remedy.<sup>2</sup> In this case, Black appears to argue that new subsection (j) of 11 Del. C. § 4333 creates a legal duty requiring the Department of Correction to file a motion to modify his sentence. Subsection (j) provides:

(j) Notwithstanding any other provision to the contrary, the provisions of subsections (b), (c), (d), and (e) of this section shall be applicable to sentences imposed prior to June 1, 2003, only upon an order of the Court entered for good cause shown after its consideration of an application for sentence modification filed by the Department of Correction.

Contrary to Black's argument, however, there is nothing 11 Del. C. § 4333(j) requiring the Department of Correction to act on his behalf. It is within the Department's discretion to determine whether to file a motion for modification of an offender's sentence. A writ of mandamus may not be used to compel the performance of a discretionary duty.<sup>3</sup>

(5) Having carefully considered the parties' respective positions, we find it manifest that the judgment of the Superior Court should be affirmed on the basis of the Superior Court's well-reasoned order dated April 13, 2004. The Superior Court did not err in concluding that the Department

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<sup>2</sup> *Clough v. State*, 686 A.2d 158, 159 (Del. 1996).

<sup>3</sup> *Darby v. New Castle Gunning Bedford Educ. Ass'n*, 336 A.2d 209, 210 (Del.1975).

of Correction did not have a legal duty to seek a modification of Black's sentence. Accordingly, we find no abuse of discretion in the Superior Court's summary disposition of Black's petition for a writ of mandamus.

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

BY THE COURT:

/s/ Jack B. Jacobs  
Justice