

IN THE SUPREME COURT OF THE STATE OF DELAWARE

IN THE MATTER OF THE §
PETITION OF LEROY COOK FOR § No. 155, 2002
A WRIT OF MANDAMUS §

Submitted: April 9, 2002
Decided: May 6, 2002

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

ORDER

This 6th day of May 2002, upon consideration of the petition of Leroy Cook for a writ of mandamus, as well as the State's answer and motion to dismiss, it appears to the Court that:

(1) The petitioner, Leroy Cook, seeks to invoke the original jurisdiction of this Court by requesting that a writ of mandamus be issued to the Superior Court in order to correct his sentence. The State has filed a motion to dismiss. The Court has reviewed the parties' respective positions carefully. We find that Cook's petition manifestly fails to invoke the original jurisdiction of this Court. Accordingly, the petition must be DISMISSED.

(2) The record reflects that Cook was convicted in 1998 of first degree robbery and was sentenced to five years at Level V incarceration suspended after thirty months for thirty months of decreasing levels of supervision. In August 2000, Cook's sentence was modified to allow his placement at Level

IV Re-entry Court. The modification provided for graduated sanctions in the event Cook violated conditions of his supervision. By February 2001, Cook had four separate violations. Therefore, the Superior Court revoked Cook's Level IV release and sentenced him to thirty months at Level V, suspended after eighteen months for six months at Level IV. Cook did not appeal. Instead, Cook filed this petition for a writ of mandamus. Cook seeks an extraordinary writ compelling the Superior Court to reduce the Level V portion of his sentence.

(3) This Court has authority to issue a writ of mandamus only when the petitioner can demonstrate a clear right to the performance of a duty, no other adequate remedy is available, and the trial court arbitrarily has failed or refused to perform its duty.¹ An extraordinary writ will not be issued if the petitioner has another adequate and complete remedy at law to correct the act of the trial court that is alleged to be erroneous.² A petitioner who has an adequate remedy in the appellate process may not use the extraordinary writ process as a substitute for a properly filed appeal.³

¹ *In re Bordley*, 545 A.2d 619, 620 (Del. 1988).

² *Canaday v. Superior Court*, 116 A.2d 678, 682 (Del. 1955).

³ *See Matushefske v. Herlihy*, 214 A.2d 883, 885 (Del. 1965).

(4) In this case, it is manifest that Cook could have appealed from the Superior Court's imposition of sentence following the revocation proceeding in February 2001. He did not. Cook clearly had an adequate remedy in the appellate process, but he failed to avail himself of that process. Cook may not invoke the Court's extraordinary writ process as a substitute for his failure to file a timely appeal.⁴

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

BY THE COURT:

s/ Joseph T. Walsh
Justice

⁴ See *In re Barbee*, 693 A.2d 317, 319 (Del. 1997).