

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

IN AND FOR SUSSEX COUNTY

TREMAYNE L. PARKER, : C.A. No. 05M-12-002 - THG  
Petitioner, :  
v. :  
ATTORNEY GENERAL M. JANE BRADY, :  
Respondent. :

DECISIONS ON MOTION TO PROCEED IN FORMA PAUPERIS  
AND UPON REVIEW OF PETITION SEEKING WRIT OF MANDAMUS

Pending before the Court are a petition seeking a writ of mandamus which petitioner Tremayne L. Parker (“petitioner”) has filed and a motion to proceed in forma pauperis. This is my decision granting the motion to proceed in forma pauperis but dismissing the petition seeking a writ of mandamus.

Petitioner has filed the information required to support his motion to proceed in forma pauperis. 10 Del. C., ch. 88. He has established he is indigent. Accordingly, I grant the motion to proceed in forma pauperis. That does not, however, mean that the action proceeds. Instead, the Court reviews the petition to determine if it is factually or legally frivolous or if it is malicious. 10 Del. C. §8803(b).

In his petition, petitioner alleges the following. He names as respondent M. Jane Brady, Attorney General. As petitioner acknowledges in recent correspondence, Ms. Brady no longer is the Attorney General. That issue is insignificant to the outcome of this decision. Petitioner alleges

that the Attorney General oversees the Board of Managers of the Delaware Justice Information System (“DELJIS”). He maintains that the Attorney General’s duties include producing criminal information/data that must be disclosed upon a request pursuant to the Freedom of Information Act (“FOIA”), 29 Del. C. § 10001, et seq. He explains that he made a FOIA request and attaches a copy of that request, which I review below.

By request dated November 10, 2005, petitioner requested of the Attorney General the following:

A complete listing of all criminal defendants sentenced pursuant to Title 16 Del. C 4763(A)(3) from its enactment to present date on file/record.<sup>1</sup>

The stated purpose for acquiring this information was set forth as follows:

Is for the general purpose of review and/or use as an exhibit in regards of the proper legal documents being filed within the courts, if found to have been utilized in an incorrect fashion. It is believed that the now former subsection of law was applied in sentencing certain criminal defendants in a unfair, improper and discriminated manner, that is otherwise in violation of the United States Constitution.

Petitioner clarified in the request that he was not seeking any information which would identify any individual. He asked that the applicable defendants not to be named but be given the names “John Doe 1”, etc. Petitioner specifically asked that the Attorney General provide the race, county of conviction and sentence, name of prosecuting Deputy Attorney General, name of the presiding Judge and the date of the sentence for each record produced unless that information would identify the individual. Petitioner stated that if any of the requested information could not be produced on the ground that it could identify an individual, then the response must include the reason why.

Petitioner explains in the petition seeking a writ of mandamus that the Attorney General did

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<sup>1</sup>The correct reference is 16 Del.C. §4763(a)(3). Petitioner correctly explains that that subsection was stricken by 74 Del. Laws, c. 106 (2003).

not respond to his request. Petitioner acknowledges that the information will have to be produced by way of DELJIS. Petitioner references and distinguishes the case of Board of Managers of the Delaware Criminal Justice Information System v. Gannett Co., t/a The News Journal which has orders and opinions set forth at the following citations:

Del. Super., C.A. No. 01C-01-039, Witham, J. (April 2, 2001), app. den., 781 A.2d 692 (Del. 2001);

Del. Super., C.A. No. 01C-01-039, Witham, J. (Sept. 14, 2001) (ORDER);

Del. Super., C.A. No. 01C-01-039, Witham, J. (Dec. 28, 2001);

808 A.2d 453 (Del. Super. 2002), reargu. den., Del. Super., C.A. No. 01C-01-039, Witham, J. (Jan. 17, 2003), aff'd in part, vac. in part, rev'd in part, 840 A.2d 1232 (Del. 2003);

847 A.2d 1123 (Del. Super. 2004), reargu. den., Del. Super., C.A. No. 01C-01-039, Witham, J. (Sept. 6, 2005)

Petitioner then goes on to explain in his petition his intentions in obtaining this information. He believes that only Black African Americans have been sentenced under the former version of 16 Del. C. § 4763(a)(3) and he wishes to file a suit challenging the sentencing based on an improper application of the law only to Black African Americans. He demands the issuance of a writ of mandamus instructing that the requested information be disclosed.

This petition must be dismissed for several reasons.

First, FOIA requires that the request be made on the custodian of records for the appropriate public body. 29 Del. C. § 10003(a). In order to obtain the information he seeks, petitioner had to make a demand upon the Board of Managers of DELJIS and the State Bureau of Investigation. 11 Del. C., ch. 85 and 86. The Attorney General does not have custody of or control over the disclosure of criminal records. Thus, the Attorney General had no duty to answer the

request. A writ of mandamus issues only to a public official instructing the performance of clear legal or ministerial duty. Guy v. Greenhouse, Del. Supr., No. 285, 1993, Walsh, J. (December 30, 1993). Since petitioner failed to submit the FOIA request to the appropriate parties, his claim for a writ of mandamus fails.

Even if petitioner had made the request as required, the petition would be denied. Petitioner has affirmatively stated that he wants the information in order to support litigation he intends to pursue. FOIA specifically deems “[a]ny records pertaining to pending or potential litigation which are not records of any court” not to be public records. 29 Del. C. § 1002(g)(9). The records at hand are not records of the court; they are records compiled from various criminal justice agencies. Although they are accessible to the courts, they are not court records. Since the records pertain to potential litigation, they are exempt from disclosure. Id.; Office of the Public Defender v. Delaware State Police, Del. Super., C.A. No. 01C-09-208, Silverman, J. (March 31, 2003).

For the foregoing reasons, the Court dismisses the petition seeking a writ of mandamus with prejudice.

IT IS SO ORDERED.

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JUDGE

cc: Prothonotary’s Office  
Tremayne R. Parker  
Carl C. Danberg, Attorney General