

IN THE SUPREME COURT OF THE STATE OF DELAWARE

RONALD E. PROCTOR, JR.,	§	
	§	No.137, 2006
Petitioner Below,	§	
Appellant,	§	Court Below--Superior Court
	§	of the State of Delaware in and
v.	§	for New Castle County
	§	
M. JANE BRADY, Attorney	§	
General,	§	
	§	
Respondent Below,	§	C.A. No. 05M-12-082
Appellee.	§	

Submitted: October 13, 2006

Decided: January 8, 2007

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

ORDER

This 8th day of January 2007, upon consideration of the appellant's opening brief and the appellee's motion to affirm, it appears to the Court that:

(1) The appellant, Ronald Proctor, is an inmate in the custody of the Department of Correction. In December 2005, Proctor filed a petition for a writ of mandamus with the Superior Court. Proctor sought to compel the Attorney General to initiate enforcement proceedings under the State Freedom of Information Act.¹

¹See generally Del. Code Ann. tit. 29, § 10005 (2003) (governing enforcement proceedings under State Freedom of Information Act).

(2) By order dated January 26, 2006, the Superior Court summarily denied Proctor's mandamus petition. This appeal followed.

(3) The Superior Court may issue a writ of mandamus to a State officer, tribunal, board or agency to compel the performance of an official duty.² Mandamus is issuable not as a matter of right, but only in the exercise of sound judicial discretion.³ A writ of mandamus is appropriate only if the petitioner can establish a clear legal right to the respondent's performance of a non-discretionary duty.⁴

(4) The Superior Court did not abuse its discretion when it summarily denied Proctor's mandamus petition to compel the Attorney General to initiate enforcement proceedings. Proctor did not establish that the Attorney General arbitrarily failed or refused to perform a non-discretionary duty owed to Proctor.

NOW, THEREFORE, IT IS ORDERED that the motion to affirm is GRANTED. The judgment of the Superior Court is AFFIRMED.

BY THE COURT:

/s/ Carolyn Berger
Justice

²See Del. Code Ann. tit. 10, § 564 (1999) (governing mandamus proceedings in the Superior Court); Del. Code Ann. tit. 29, § 10143 (2003) (providing that person aggrieved by the failure of an agency to take action required of it by law may bring action for writ of mandamus).

³*Schagrin Gas Co. v. Evans*, 418 A.2d 997, 998 (Del. 1980).

⁴*Semick v. Dep't of Corr.*, 477 A.2d 707, 708 (Del. 1984).