

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE
IN AND FOR SUSSEX COUNTY

JAMES A. WILSON, : C.A. No. S10M-01-024 THG
Petitioner, :
v. :
WARDEN MIKE DELOY :
RECORDS REBECCA McBRIDE, :
Respondents. :

ORDER DENYING MOTION TO PROCEED *IN FORMA PAUPERIS*
AND DISMISSING PETITION SEEKING WRIT OF MANDAMUS

1) Petitioner James A. Wilson (“petitioner”) has filed a petition seeking a writ of mandamus requesting the Court order the respondents to recalculate his sentence to give him credit for time served and provide good time credits to which he claims he is entitled.¹ Petitioner also has filed a motion to proceed *in forma pauperis*.

2) The motion to proceed *in forma pauperis* is denied because petitioner failed to provide required information in the Affidavit in Support of the Application to Proceed *In Forma Pauperis* (“the Application”). Item 10 of the Affidavit required petitioner to provide information

¹Petitioner filed the petition with Sussex County Superior Court. The caption indicates he is filing it in the New Castle Superior Court. Because the Sussex County Court has been dealing with petitioner’s most recent writ of *habeas corpus* and because the petition is filed with the Sussex County Court, this Court will consider the pending motion to proceed *in forma pauperis* and the petition seeking a writ of mandamus.

regarding cases he has filed while incarcerated. Petitioner responded, “N/A”. He failed to set forth information on the numerous actions he has filed regarding the calculation of his sentence and his release date. This information is particularly applicable to this case because a review of those cases shows that the calculation of petitioner’s release date has been confirmed by the Superior Court and the Supreme Court. The Court denies the motion to proceed *in forma pauperis* because petitioner omitted this information.

3) The Court could provide petitioner with the opportunity to pay a filing fee and continue this litigation. However, as a part of the consideration of the motion to proceed *in forma pauperis*, this Court reviewed the petition pursuant to 10 *Del. C.* § 8803(b) and has determined it is legally frivolous. Consequently, it would be a waste of resources to allow petitioner to pursue this petition.

4) The Superior Court first ruled that petitioner’s adjusted release date was calculated correctly in a July 2, 2009, order denying petitioner’s petition seeking a writ of *habeas corpus*. *Wilson v. State*, Del. Super., C.A. No. 09M-06-009, Witham, J. (July 2, 2009). On appeal, the State of Delaware provided to the Supreme Court information on the calculation of petitioner’s sentence. State’s Answer in *Wilson v. State*, Del. Supr., No. 406, 2009. This information established that petitioner’s adjusted release date is May 10, 2011.² The Supreme Court affirmed the decision of the Superior Court denying the writ of *habeas corpus*, concluding the calculations

²Originally, the adjusted release date was June 18, 2011. The final status sheet provided the Supreme Court provided an adjusted release date which is forty days earlier, and that date is May 10, 2011. The release date calculations provided for statutory good time credits of 794 days and included 113 days of meritorious good time credits. State’s Answer in *Wilson v. State*, Del. Supr., No. 406, 2009.

were correct. *Wilson v. State*, 984 A.2d 125, 2009 WL 3636903 (Del. Nov. 2, 2009) (TABLE).³

5) On November 10, 2009, petitioner filed a petition in the Supreme Court asking that it issue a writ of mandamus to the Superior Court instructing it to compel the Department of Correction to release petitioner from incarceration. *Wilson v. State*, Del. Supr., No. 658, 2009. The Supreme Court explained, again, that “[t]he record reflects that Wilson properly remains incarcerated because he is serving the remainder of his sentence for a parole violation.” *In re Wilson*, 2009 WL 4300889 (Del. Dec. 1, 2009).

6) In the current petition, petitioner raises the same issues he raised in the above-referenced petitions seeking *habeas corpus* and a writ of mandamus. Petitioner’s sentences, credits, and adjusted release date have been confirmed. Petitioner’s current petition is legally frivolous.

7) For the foregoing reasons, petitioner’s motion to proceed *in forma pauperis* is DENIED and his petition seeking a writ of mandamus is DISMISSED.

IT IS SO ORDERED THIS 29th DAY OF JANUARY, 2010.

/s/ T. Henley Graves

JUDGE

cc: Prothonotary’s Office
James A. Wilson
The Honorable William L. Witham, Jr.
The Honorable Richard R. Cooch
John Williams, DAG
Rebecca McBride
Warden Mike DeLoy

³The Supreme Court mistakenly cited to the June 18, 2011 date as being the adjusted release date when in fact, the adjusted release date is May 10, 2011.