

IN THE SUPREME COURT OF THE STATE OF DELAWARE

BRIAN J. WINWARD,	§
	§
Petitioner Below-	§ No. 454, 2001
Appellant,	§
	§
v.	§ Court Below—Superior Court
	§ of the State of Delaware,
STANLEY TAYLOR,	§ in and for New Castle County
	§ C.A. No. 01M-01-002
Respondent Below-	§
Appellee.	§

Submitted: November 7, 2001

Decided: December 12, 2001

Before **VEASEY**, Chief Justice, **HOLLAND** and **BERGER**, Justices

**ORDER**

This 12th day of December 2001, upon consideration of the appellant's opening brief and the appellee's motion to affirm pursuant to Supreme Court Rule 25(a), it appears to the Court that:

(1) The petitioner-appellant, Brian J. Winward, filed this appeal from the August 23, 2001 order of the Superior Court dismissing his petition for a writ of mandamus, denying his various motions and enjoining him from filing repetitive claims. The State of Delaware, as the real party in interest, has moved to affirm the judgment of the Superior Court on the

ground that it is manifest on the face of Winward's opening brief that the appeal is without merit.<sup>1</sup> We agree and AFFIRM.

(2) In this appeal, Winward claims that the Superior Court abused its discretion by a) dismissing his petition for a writ of mandamus, including his claims of constitutional violations, b) denying his various motions,<sup>2</sup> and c) enjoining him from filing any further pleadings in forma pauperis<sup>3</sup> with respect to the issues raised in his petition for a writ of mandamus. Winward asks that counsel be appointed and his case be permitted to proceed through discovery and trial or, alternatively, that the Department of Correction be ordered to re-classify him and enroll him in the Key Program.<sup>4</sup>

(3) Winward is currently serving a lengthy Level V prison sentence after being convicted of several violent felonies. Winward's petition for a writ of mandamus requesting that the Department of Correction be ordered to enroll him in the Key Program was the latest in a

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<sup>1</sup>Supr. Ct. R. 25(a).

<sup>2</sup>Winward filed motions to enlarge the time to respond to the State's motion to dismiss, appoint counsel, strike the State's motion to dismiss and impose sanctions against the State.

<sup>3</sup>10 *Del. C.* § 8803(e).

long series of legal actions Winward has filed to compel his participation in various drug treatment programs for inmates.<sup>5</sup>

(4) A writ of mandamus is a command that may be issued by the Superior Court to an inferior court, public official or agency to compel the performance of a duty to which the petitioner has established a clear legal right.<sup>6</sup> The petitioner must also establish that there has been an arbitrary refusal or failure to act and there is no other adequate remedy available.<sup>7</sup> Ultimately, the issuance of such a writ is within the discretion of the Superior Court.<sup>8</sup>

(5) There was no error or abuse of discretion in any of the Superior Court's rulings. The Superior Court correctly determined that Winward's petition for a writ of mandamus failed to state a claim upon which relief may be granted, first, because an inmate's participation in a

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<sup>4</sup>The Key Program is a drug treatment program for inmates. Inmates participating in the Key Program are classified at Level IV rather than Level V.

<sup>5</sup>Our review of the record indicates that Winward has unsuccessfully pursued numerous similar claims over the course of several years both in the federal courts and the Delaware state courts, including the Superior Court and the Court of Chancery.

<sup>6</sup>*Clough v. State*, Del. Supr., 686 A.2d 158, 159 (1996).

<sup>7</sup>*Id.*; *In re Bordley*, Del. Supr., 545 A.2d 619, 620 (1988).

<sup>8</sup>*Ingersoll v. Rollins Broadcasting of Delaware, Inc.*, Del. Supr., 272 A.2d 336, 338 (1970).

particular drug treatment program rests within the discretion of the Department of Correction<sup>9</sup> and, second, because “an inmate does not have a constitutionally protected liberty interest in his or her prison classification status.”<sup>10</sup> As such, Winward could not establish a clear legal right to the relief he requested.<sup>11</sup> Also, because Winward’s motion for enlargement of time was moot, his motion for the appointment of counsel was repetitive and his motions to strike and for sanctions had a faulty factual basis, the Superior Court properly exercised its discretion in denying them. Finally, there was no error or abuse of discretion on the part of the Superior Court in enjoining Winward from filing repetitive claims in the future.<sup>12</sup>

(6) It is manifest on the face of Winward’s opening brief that the appeal is without merit because the issues presented on appeal clearly are

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<sup>9</sup>*Clough v. State*, 686 A.2d at 159.

<sup>10</sup>*Id.*

<sup>11</sup>The Superior Court specifically rejected Winward’s contention that prior orders of a now-retired Superior Court judge prevent dismissal of his petition. The first order, dated September 22, 1997, states that Winward “may enter the Key Program while incarcerated.” The second order, dated February 8, 2001, orders the State to respond to Winward’s petition. The Superior Court properly determined that the first order permitted, but did not mandate, Winward’s entry into the Key Program and that the second order did not prevent its subsequent dismissal of Winward’s petition, upon an independent review of the petition, the State’s timely motion to dismiss, as well as the retired judge’s order.

<sup>12</sup>10 *Del. C.* §§ 8801(7) and 8803(e).

controlled by settled Delaware law and, to the extent that judicial discretion is implicated, clearly there was no abuse of discretion.

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

BY THE COURT:

/s/ Randy J. Holland  
Justice