

IN THE SUPREME COURT OF THE STATE OF DELAWARE

CHRISTOPHER R. DESMOND,	§
	§ No. 642, 2011
Petitioner Below-	§
Appellant,	§
	§ Court Below—Superior Court
v.	§ of the State of Delaware
	§ in and for New Castle County
PERRY PHELPS, Warden, and	§ C.A. No. 11M-10-126
JOSEPH R. BIDEN, III, Attorney	§
General of the State of Delaware,	§
	§
Respondents Below-	§
Appellees.	§

Submitted: December 19, 2011

Decided: February 8, 2012

Before **STEELE**, Chief Justice, **JACOBS** and **RIDGELY**, Justices

ORDER

This 8th day of February 2012, upon consideration of the appellant’s opening brief and the appellee’s motion to affirm pursuant to Supreme Court Rule 25(a),¹ it appears to the Court that:

(1) The petitioner-appellant, Christopher R. Desmond, filed an appeal from the Superior Court’s November 4, 2011 order dismissing his petition for a writ of mandamus. The respondents-appellees, Perry Phelps, Warden of the James T. Vaughn Correctional Center (“JTVCC”), and

¹ The appellant also filed a motion to strike the appellee’s motion to affirm on the ground of untimeliness, which we consider in this Order.

Joseph R. Biden, III, Attorney General of the State of Delaware, have moved to affirm the Superior Court's judgment on the ground that it is manifest on the face of the opening brief that the appeal is without merit.² We agree and affirm.

(2) The record reflects that Desmond is an inmate at JTVCC. In his petition for a writ of mandamus, Desmond requested the Superior Court to compel Warden Phelps to a) reclassify his housing from maximum security to housing with fewer restrictions; b) remove a disciplinary report from his prison file; c) pre-screen inmates before placing them in particular housing units; and d) monitor any attempts at retaliation against him for filing his petition. The Superior Court dismissed Desmond's petition as legally frivolous.

(3) In this appeal, Desmond claims that the Superior Court committed legal error by failing to rectify violations of his constitutional rights committed by prison officials. Specifically, Desmond contends that his assignment to maximum security housing threatened his safety and constituted improper retaliation against him for his involvement in prisoner outreach. Moreover, he contends, his objections to being placed in maximum security housing have led to further retaliation against him.

² Supr. Ct. R. 25(a).

(4) The record in this case reflects that Desmond is serving sentences for serious crimes including arson, robbery and weapon violations. He also was convicted of escape on three separate occasions. In January 2011, Desmond was transferred to a cell in another building at JTVCC. He refused to enter the cell and was transferred to disciplinary housing. Desmond later was transferred to another cell, which he refused to enter because it was occupied by a prisoner with whom he had a history of conflict. When corrections officers attempted to place Desmond in the cell, he resisted them and an altercation ensued. A disciplinary report was filed against Desmond and he was sent to the isolation unit. His disciplinary appeal failed. Desmond later was sent to maximum security housing. His appeal of his housing classification was denied.

(5) Under Delaware law, 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.³ As a condition precedent to the issuance of the writ, the petitioner must demonstrate that a) he has a clear right to the performance of the duty; b) no other adequate remedy is available; and c) there was an arbitrary failure or refusal to perform the

³ *Clough v. State*, 686 A.2d 158, 159 (Del. 1996).

duty.⁴ A writ of mandamus will not issue to compel a discretionary act.⁵ Delaware law also provides that inmates in the prison system have no protected liberty interest in a particular housing classification or particular housing unit.⁶ Moreover, the transfer of prisoners from one housing unit to another falls within the ambit of the discretionary duties of prison officials.⁷ Having reviewed the record in this case in light of the above legal principles, we conclude that the Superior Court's dismissal of Desmond's petition for a writ of mandamus was proper.

(6) It is manifest on the face of the opening brief that this appeal is without merit because the issues presented on appeal are controlled by settled Delaware law and, to the extent that judicial discretion is implicated, there was no abuse of discretion.⁸

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

BY THE COURT:

/s/ Henry duPont Ridgely
Justice

⁴ Id.

⁵ *In re Hyson*, 649 A.2d 807, 808 (Del. 1994).

⁶ *Sanders v. Danberg*, Del. Supr., No. 53, 2010, Ridgely, J. (June 8, 2010).

⁷ Id.

⁸ We also conclude that Desmond's motion to strike the motion to affirm on the ground of untimeliness is without merit. Even assuming that the motion to affirm was untimely, this Court has the authority to affirm the Superior Court's judgment *sua sponte* after the filing of the opening brief, which is warranted in this case. Supr. Ct. R. 25(b).