

SUPREME COURT OF THE STATE OF DELAWARE

Winter v. Department of Justice and Department of Correction

Winter v. Department of Justice and Department of Correction · No. No. 11, 2019 · Decided May 15, 2019

SUMMARY

The Delaware Supreme Court affirmed the dismissal of Hermione K.I. Winter's petition for a writ of mandamus seeking transfer from a male correctional facility or immediate release. The Court held that inmate housing and transfer decisions are discretionary Department of Correction matters not subject to mandamus, and declined to consider claims raised for the first time on appeal.

CASE DETAILS

COURT	Supreme Court of the State of Delaware
WRITING FOR THE COURT	Collins J. Seitz, Jr.; Vaughn; Seitz; Traynor
JURISDICTION	Delaware
DECIDED	May 15, 2019
DOCKET	No. 11, 2019
DISPOSITION	affirmed
PROCEDURAL POSTURE	Appeal from the Superior Court's dismissal of a petition for a writ of mandamus; the respondents moved to affirm under the Delaware Supreme Court's summary affirmance procedure.
STANDARD OF REVIEW	The Court granted the State's motion to affirm because it was manifest on the face of Winter's opening brief that the appeal was without merit; claims not raised below were not considered for the first time on appeal.
PRECEDENTIAL VALUE	Published opinion
PARTIES	Hermione K.I. Winter v. Delaware Department of Justice, Delaware Department of Correction

TOPICS

writ of certiorari preservation of error appellate procedure civil rights remedies

PRACTICE AREAS

appellate procedure administrative law civil rights remedies

QUESTIONS PRESENTED

1. Whether Winter could obtain a writ of mandamus compelling the Department of Correction to transfer her to a female prison.
2. Whether claims concerning religious rights and gender reassignment surgery that were not raised in the Superior Court could be considered for the first time on appeal.

HOLDINGS

1. The Court would not address claims that Winter did not raise in the proceedings below.
2. Mandamus was unavailable because decisions concerning the housing and transfer of inmates fall within the Department of Correction's discretion, and mandamus cannot compel a discretionary act.

KEY QUOTATIONS

“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.” (2)

“A writ of mandamus will not issue to compel a discretionary act.” (2)

FACTUAL BACKGROUND

Hermione K.I. Winter, a transgender inmate at James T. Vaughn Correctional Center, alleged that housing her in a male prison created safety and privacy concerns and involved unspecified violations of her religious rights. She sought a writ compelling transfer to a female facility or immediate release. The Department of Correction described its policies for housing transgender inmates and maintained that mandamus was inappropriate because the housing decision was discretionary.

PROCEDURAL HISTORY

Winter filed a petition for a writ of mandamus in the Superior Court seeking transfer from a male correctional facility to a female facility or immediate release. The respondents moved to dismiss, arguing that inmate housing and transfer decisions are discretionary and therefore not subject to mandamus. The Superior Court granted the motion to dismiss, and the Supreme Court of Delaware granted the motion to affirm and affirmed.

DISPOSITION

affirmed

CASES CITED

- Clough v. State, 686 A.2d 158, 159 (Del. 1996)
- Darby v. New Castle Gunning Bedford Educ. Ass'n, 336 A.2d 209, 211 (Del. 1975)
- Desmond v. Phelps, 2012 WL 424891, at *2 (Del. Feb. 8, 2012)

OPINION

PER CURIAM.

IN THE SUPREME COURT OF THE STATE OF DELAWARE HERMIONE K.I. WINTER, § §
Petitioner Below, § No. 11, 2019 Appellant, § § Court Below—Superior Court v. § of the State of
Delaware § DELAWARE DEPARTMENT OF § C.A. No. S18M-08-023 JUSTICE AND THE
DELAWARE § DEPARTMENT OF § CORRECTION, § § Respondents, § Appellees. Submitted:
May 10, 2019 Decided: May 15, 2019 Before VAUGHN, SEITZ, and TRAYNOR, Justices.

ORDER After consideration of the appellant’s opening brief, the State’s motion to affirm, and the
record below, it appears to the Court that: (1) The appellant, Hermione K.I. Winter, filed this
appeal from the Superior Court’s dismissal of her petition of a writ of mandamus.

The Delaware Department of Justice and the Delaware Department of Correction have filed a
motion to affirm the judgment below on the ground that it is manifest on the face of Winter’s
opening brief that her appeal is without merit.

We agree and affirm. (2) On August 27, 2018, Winter filed a two-page petition for a writ of
mandamus in the Superior Court. Winter, a transgender inmate at James T. Vaughn Correctional
Center, alleged that she was being unlawfully held in a male prison where there were safety and
privacy concerns, as well as unspecified violations of her religious rights and sought an order
compelling a transfer to a female facility or immediate release.

The respondents filed a motion to dismiss, describing the Department of Correction’s policies for
the housing of transgender inmates and arguing that a mandamus action was inappropriate for a
discretionary matter. The Superior Court granted the motion to dismiss. This appeal followed.

(3) Winter devotes most of her opening brief to alleged violations of her religious rights under the
Religious Land Use & Institutionalized Persons Act. She also seeks gender reassignment surgery.
She did not raise these claims in the proceedings below and we will not address them for the first
time on appeal.¹ As to her argument that she is entitled to a writ of mandamus compelling her
transfer to a female prison, “[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.”² A writ of mandamus will not issue to
compel a discretionary act.³ Decisions regarding the housing of inmates and the transfer of
inmates from one housing unit to another ¹ Supr.

Ct. R. 8. ² *Clough v. State*, 686 A.2d 158, 159 (Del. 1996). ³ *Darby v. New Castle Gunning
Bedford Educ. Ass’n*, 336 A.2d 209, 211 (Del. 1975). ² fall within the discretion of the
Department of Correction.⁴ Having reviewed the record in this case in light of the above legal
principles, we conclude that the Superior Court’s dismissal of Winter’s petition for a writ of
mandamus was proper.

NOW, THEREFORE, IT IS ORDERED that motion to affirm is GRANTED and the judgment of the Superior Court is AFFIRMED. BY THE COURT: /s/ Collins J. Seitz, Jr. Justice 4 Desmond v. Phelps, 2012 WL 424891, at *2 (Del. Feb. 8, 2012). 3

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