

Circuit Court for Allegany County
Case No.: C-01-CV-21-000199

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 1515

September Term, 2021

NORMAN MAYES

v.

SECRETARY OF THE DEPARTMENT
OF PUBLIC SAFETY AND
CORRECTIONAL SERVICES

Wells, C.J.,
Tang,
Meredith, Timothy E.,
(Senior Judge, Specially Assigned),

JJ.

PER CURIAM

Filed: December 2, 2022

*This is an unreported opinion, and it may not be cited in any paper, brief, motion, or other document filed in this Court or any other Maryland Court as either precedent within the rule of stare decisis or as persuasive authority. Md. Rule 1-104.

Norman Mayes, appellant, appeals from an order by the Circuit Court for Allegany County dismissing his petition for writ of mandamus against the Department of Public Safety and Correctional Services, appellee. His sole claim on appeal is that the circuit court erred in dismissing his petition because he had a clear legal right to the relief requested. For the following reasons, we shall affirm.

Mayes, an inmate at Western Correctional Institution, is a “prisoner” as defined by Md. Code. Cts. & Jud. Proc. § 5-1001(g). In October 2020, Mayes filed a grievance with the warden of his institution under COMAR 12.02.28.09 seeking modification of Division of Correction Directives to enable him to purchase a typewriter. When the warden dismissed his grievance, Mayes properly appealed the matter to the Commissioner of Correction. *See* COMAR 12.02.28.14. When the Commissioner failed to respond to Mayes’s grievance within the required timeframe, Mayes properly appealed to the Inmate Grievance Office (IGO). *See* COMAR 12.02.28.18.

Once in the IGO, however, Mayes’s appeal stalled. As part of its preliminary review, the IGO requested additional information from Mayes. The IGO’s request indicated that if it did not receive the information within 30 days, it would dismiss Mayes’s grievance under Md. Code, Corr. Servs. § 10-207(b)(2)(ii) without further notice. Mayes provided the requested information within that deadline. In the five months that followed, however, Mayes received no further communication from the IGO.

In light of this, Mayes filed a petition for writ of mandamus in the circuit court seeking to compel the Commissioner to modify Division of Correction Directives to enable him to purchase a typewriter. Notably, however, Mayes did not seek to compel a decision

from the IGO. The Department filed a motion to dismiss Mayes’s petition, which the circuit court granted. This appeal followed.

The Department first argues that Mayes did not exhaust his administrative remedy because he did not have a final decision from the IGO. Alternatively, it argues we should affirm the circuit court’s ruling because Mayes failed to state a cognizable claim for mandamus relief. Mayes counters that a writ of mandamus was the only relief available to him given the IGO’s inaction. For the reasons stated below, we agree with the Department that Mayes failed to state a cognizable claim for mandamus relief. Therefore, we need not address whether Mayes exhausted his administrative remedy or whether a writ of mandamus compelling a decision from the IGO would have been available had he requested that relief. *See Forster v. State, Off. of Pub. Def.*, 426 Md. 565, 580–81 (2012).

We review the granting of a motion to dismiss for legal correctness. *Harris v. McKenzie*, 241 Md. App. 672, 678 (2019). A common-law mandamus proceeding seeks to compel a public official to perform a clear legal duty that is not discretionary and that does not depend on personal judgment.¹ *Falls Road Cmty. Ass’n v. Baltimore Cnty.*, 437 Md. 115, 139 (2014).

Here, Mayes sought a writ compelling the Commissioner to modify Division of Correction Directives to enable him to purchase a typewriter. But the Commissioner “has

¹ Though not specified, the parties have litigated the case to date as though this is a common-law mandamus proceeding—arguing whether Mayes has a “clear legal right” to a typewriter—as opposed to an administrative mandamus proceeding, so we will review it as such. *See Hughes v. Moyer*, 452 Md. 77, 90–91 (2017) (discussing the difference between common-law and administrative mandamus proceedings).

been vested with authority to establish the policies that govern the confinement of inmates in [their] custody.” *Watkins v. Sec’y, Dep’t of Pub. Safety and Corr. Servs.*, 377 Md. 34, 50 (2003). They have sole discretion and authority to determine the conditions under which an inmate is confined. *See Turner v. Safley*, 482 U.S. 78, 89 (1987) (“[P]rison administrators . . . , and not the courts, [are] to make the difficult judgments concerning institutional operations.”) (quoting *Jones v. N.C. Prisoners’ Union*, 433 U.S. 119, 128 (1977)); *see also State v. McCray*, 267 Md. 111, 129 (1972). And that discretion extends to the creation and modification of policies concerning the property that inmates may possess. *See Stewart v. State*, 1 Md. App. 309, 316 (1967). Thus, because the action under review was discretionary, a common-law mandamus was not available. The circuit court’s decision to dismiss Mayes’s petition was therefore legally correct.

**JUDGMENT OF THE CIRCUIT
COURT FOR ALLEGANY COUNTY
AFFIRMED. COSTS TO BE PAID BY
APPELLANT.**