

CARL SIMON,	)	
Petitioner,	)	
v.	)	CIVIL NO. SX-05-CV-348
	)	
JOSEPH PONTEEN – DIRECTOR, B.O.C.,	)	PETITION FOR WRIT OF MANDAMUS
ALCEDOS LETTSOME – WARDEN, B.O.C.,	)	
Respondents.	)	
	)	
PEDRO HARRIS,	)	
Petitioner,	)	
v.	)	CIVIL NO. SX-05-CV-382
	)	
BUREAU OF CORRECTIONS;	)	PETITION FOR WRIT OF MANDAMUS
DIRECTOR JOSEPH PONTEEN,	)	
WARDEN ROSALDO HORSFORD, et al.	)	
Respondents.	)	
	)	
BERNARDO VELAZQUEZ,	)	
Petitioner,	)	
v.	)	CIVIL NO. SX-05-CV-574
	)	
GOVERNMENT OF THE VIRGIN ISLANDS,	)	PETITION FOR WRIT OF MANDAMUS
BUREAU OF CORRECTIONS,	)	
Respondents.	)	
	)	
BERTIE HENRY,	)	
Petitioner,	)	
v.	)	CIVIL NO. SX-05-CV-638
	)	
GOVERNMENT OF THE VIRGIN ISLANDS,	)	PETITION FOR WRIT OF MANDAMUS
BUREAU OF CORRECTIONS,	)	
Respondents.	)	
	)	
MICHAEL RODRIGUEZ,	)	
Petitioner,	)	
v.	)	CIVIL NO. SX-07-CV-248
	)	
GOVERNMENT OF THE VIRGIN ISLANDS,	)	PETITION FOR WRIT OF MANDAMUS
BUREAU OF CORRECTIONS,	)	
Respondents	)	

For the reasons stated in the accompanying Memorandum Opinion, dated March 4, 2015, it is hereby,

ORDERED that that Respondents' Second Renewed Motion to Dismiss filed on May 31, 2011, in Case No. SX-05-CV-348 is **GRANTED**; it is further

ORDERED that Carl Simon's Petition for Writ of Mandamus is **DISMISSED**; it is further

ORDERED that Case No. SX-05-CV-348 is **CLOSED**; it is further

ORDERED that Respondents' Motion to Dismiss filed on December 18, 2007, in Case No. SX-05-CV-382 is **GRANTED**; it is further

ORDERED that Pedro Harris' Petition for Writ of Mandamus is **DISMISSED**; it is further

ORDERED that Case No. SX-05-CV-382 is **CLOSED**; it is further

ORDERED that Respondents' Motion to Dismiss filed on December 7, 2006, in Case No. SX-05-CV-574, is **GRANTED**; it is further

ORDERED that Bernardo Velazquez's Petition for Writ of Mandamus is **DISMISSED**; it is further

ORDERED that Case No. SX-05-CV-574 is **CLOSED**; it is further

ORDERED that Respondents' Motion to Dismiss filed on December 18, 2007, in Case No. SX-05-CV-638 is **GRANTED**; it is further

ORDERED that Bertie Henry's Petition for Writ of Mandamus is **DISMISSED**; it is further

ORDERED that Case No. SX-05-CV-638 is **CLOSED**; it is further

ORDERED that Respondents' Motion to Dismiss filed on August 24, 2010, in Case No. SX-07-CV-248 is **GRANTED**; it is further

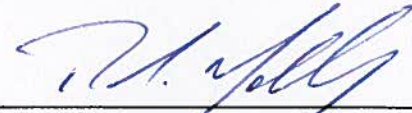
ORDERED that Michael Rodriguez's Petition for Writ of Mandamus is **DISMISSED**; it is further

ORDERED that Case No. SX-07-CV-248 is **CLOSED**.

IT IS FINALLY ORDERED that a copy of this Order and the accompanying Memorandum Opinion shall be provided to Petitioner Carl Simon, Petitioner Pedro Harris, Petitioner Bernardo Velazquez, Petitioner Bertie Henry, Petitioner Michael Rodriguez, the Office of the Attorney General, and to the Bureau of Corrections.

DONE AND SO ORDERED.

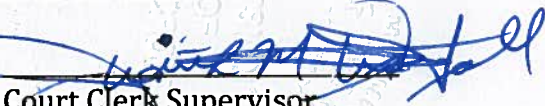
Date: March 4, 2015



ROBERT A. MOLLOY
Judge of the Superior Court

ATTEST:

Ernest H. DeRose
Clerk of the Court

By: 

Court Clerk Supervisor

Dated: 3/6/15

**IN THE SUPERIOR COURT OF THE VIRGIN ISLANDS
DIVISION OF ST. CROIX**

CARL SIMON,	)	
Petitioner,	)	
v.	)	CIVIL NO. SX-05-CV-348
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JOSEPH PONTEEN - DIRECTOR, B.O.C.,	)	PETITION FOR WRIT OF MANDAMUS
ALCEDOS LETTSOME - WARDEN, B.O.C.,	)	
Respondents.	)	
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BUREAU OF CORRECTIONS;	)	PETITION FOR WRIT OF MANDAMUS
DIRECTOR JOSEPH PONTEEN,	)	
WARDEN ROSALDO HORSFORD, et al.	)	
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GOVERNMENT OF THE VIRGIN ISLANDS,	)	PETITION FOR WRIT OF MANDAMUS
BUREAU OF CORRECTIONS,	)	
Respondents	)	
	)	

MEMORANDUM OPINION

MOLLOY, Judge.

BEFORE THE COURT are five (5) petitions for writ of mandamus filed by individuals who are or were incarcerated at the Golden Grove Adult Correctional Facility (“GGACF”). In each of these cases, the petitioners request that the Court mandate the Bureau of Corrections (“Bureau”)¹ to compensate them for worked performed as inmates at the GGACF pursuant to 5 V.I.C. § 4509. The Bureau has filed a motion to dismiss in each of these cases. Because all of these cases involve common questions of law and facts, the Court will consolidate these actions pursuant to Rule 42(a) of the Federal Rules of Civil Procedure.² For the reasons stated below, the Court will deny all five petitions and grant Defendants’ motions to dismiss all five petitions.

I. BACKGROUND

1. *Carl Simon*

Carl Simon (“Simon”), appearing *pro se*, filed a petition for writ of mandamus with this Court on June 1, 2005. Through this petition, Simon originally sought back wages totaling \$2,654.00 for work he performed as an inmate at GGACF. Simon filed a Statement of Financial Earnings on January 16, 2007 adjusting this sum, and he refers to a different figure in his Opposition to Respondent’s Second Renewed Motion to Dismiss filed July 25, 2011.³ The Bureau filed motions to dismiss on October 24, 2006 and September 23, 2008,

¹ Because all named Respondents are the Bureau of Corrections within the Government of the Virgin Islands, or officers thereof, the Court will refer to Respondents collectively as the “Bureau.”

² Federal Rule of Civil Procedure 42 provides that: “[i]f actions before the court involve a common question of law or fact, the court may . . . consolidate the actions.” Fed. R. Civ. P. 42(a). Though executed at differing levels of particularity, the five petitions make the same legal arguments, and all five cases have pending Motions to Dismiss from Respondents.

³ Simon’s Statement of Financial earnings states that Respondents owe him \$1,471.50, but the Respondents’ Second Renewed Motion to Dismiss, dated May 31, 2011, states Petitioner’s claim as being for \$1,163. In his Opposition to Respondent’s Second Renewed Motion to Dismiss, Simon does not disagree with this figure, but notes that he lost the file, including his Statement of Financial Earnings, when Respondent transferred him to a stateside institution in 2008, and accordingly, he “rel[ied] upon his memory in filing this response.”

and this Court denied these motions on December 30, 2010. The Bureau filed their Second Renewed Motion to Dismiss on May 31, 2011, and Simon filed his opposition to this motion on July 25, 2011. Neither party has since taken any action on this case.

2. *Pedro Harris*

Pedro Harris ("Harris"), appearing *pro se*, filed a petition for writ of mandamus with this Court on June 9, 2005. Therein, Harris seeks back wages totaling \$2,464.50 for work performed as an inmate at GGACF. The Bureau filed a Motion to Dismiss on December 18, 2007. On January 9, 2008, this Court issued an order that Harris provide the Court with documentation detailing the period of time that he was not paid and copies of exhibits to substantiate this amount. Neither party has since taken any action on this case.

3. *Bernardo Velazquez*

Bernardo Velazquez ("Velazquez"), appearing *pro se*, filed a petition for writ of mandamus with this Court on September 6, 2005. Therein, Velazquez seeks back wages totaling \$2,000.00 for work performed as an inmate at GGACF. The Bureau filed a Motion to Dismiss on December 7, 2006. On January 9, 2008, this Court issued an order that Velazquez provide the Court with documentation detailing the period of time that he was not paid and copies of exhibits to substantiate this amount. This Court subsequently issued an order on October 8, 2010 requiring that Velazquez comply with the January 9 order, or explain why compliance was impossible, within 30 days. Neither party has since taken any action on this case.

4. Bertie Henry

Bertie Henry ("Henry") appearing *pro se*, filed a petition for writ of mandamus with this Court on October 17, 2005. Therein, Henry sought back wages totaling \$1,091.50 for work performed as an inmate at GGACF. The Bureau filed a Motion to Dismiss on December 18, 2007. Henry adjusted the sum of his requested relief to \$365.00 in his Opposition to Motion to Dismiss dated January 25, 2008. The last action taken on this case occurred when Henry filed an Opposition to Continuance and Judgment based on the Pleadings on December 11, 2008.

5. Michael Rodriguez

Michael Rodriguez ("Rodriguez") filed a petition for writ of mandamus on March 30, 2007. Therein, Rodriguez seeks back wages totaling \$1,065.00 for work performed as an inmate at GGACF. Over three years later, pursuant to an order from this Court, the Bureau filed a Motion to Dismiss on August 24, 2010. Neither party has since taken any action on this case.

II. LEGAL STANDARD

To obtain a writ of mandamus, "a petitioner must establish that [he] has no other adequate means to attain the desired relief and that [his] right to the writ is clear and undisputable." *In re People of the V.I.*, 51 V.I. 374, 382 (2009). However, "even if the first two prerequisites have been met, the issuing court, in the exercise of its discretion, must be satisfied that the writ is appropriate under the circumstances." *In re Joseph*, 2013 WL 1401217, *3 (V.I. Apr. 5, 2013) (quoting *Cheney v. U.S. Dist. Court for the D.C.*, 542 U.S. 367,

380-81 (2004)). “[A] writ of mandamus is a drastic remedy which should be granted only in extraordinary circumstances.” *In re Morton*, 56 V.I. 313, 319 (2012).

III. DISCUSSION

All five Petitioners contend that they are entitled to compensation under 5 V.I.C. § 4509, which provides, in relevant part:

Inmates who are engaged in productive work shall be compensated at rates fixed by the Director of Corrections for work performed. Such compensations shall be in accordance with a schedule based on quality and quantity of work performed and skill required for performance. . . No inmate compensated under this section shall be considered an employee of the Government or the Bureau, nor shall such inmate come within any other provision of the Worker’s Compensation Act.

5 V.I.C. § 4509(j). Under section 4509(k), the Bureau is required to deposit the income paid to an inmate under section 4509(j) into “a depository or account maintained by the Bureau to the credit and for the benefit of the inmate.” 5 V.I.C. § 4509(k). The Bureau has the authority to withdraw funds from the inmate’s depository or account and use such funds as are necessary to meet the obligations of the inmate. *Id.* The obligations, however, must be paid in the following order:

- (1) restitution ordered by a court of competent jurisdiction to the victim of the criminal act;⁴
- (2) payment of fines pursuant to a court order, and support of dependents pursuant to a court order;
- (3) support of the inmate’s family;
- (4) payment of any legally recognized debts outstanding; and
- (5) reimbursement to the Territory for lodging, food, transportation and other expenses incurred for sustaining the inmate.

⁴ Criminal Victims Compensation Act, 34 V.I.C. § 151.

5 V.I.C. § 4509(k)(1)-(5). The balance of funds, which funds shall not be lower than twenty percent (20%) of the income earned by the inmate, shall be returned to the inmate with proper accounting immediately upon the completion of his sentence or his release on parole by the Bureau. 5 V.I.C. § 4509(k)(5).

A. The Petitioners Have Not Established that They Have No Other Adequate Means to Obtain the Release of Funds

In its motions to dismiss, the Bureau contends that the Court should dismiss the petitions because Petitioners have not demonstrated that they have exhausted their administrative remedies under the Bureau's Offender Policy Handbook.⁵ It is a well-established principle in law that "mandamus relief is only available if 'all other avenues of relief' have been exhausted." *United States v. W. Indies Transp. Co.*, 35 F. Supp. 2d 450, 457, 40 V.I. 304, 313 (D.V.I. 1998), *quoting Heckler v. Ringer*, 466 U.S. 602, 616 (1984). "Ordinarily, the availability of other adequate remedies is fatal to a petition for writ of mandamus." *Bryan v. Fawkes*, 2014 V.I. LEXIS 44, 24, 2014 WL 3528698 (V.I. Super. June 19, 2014), *quoting In re Le Blanc*, 49 V.I. 508, 517 (V.I. 2008).

The Court finds that the procedures listed in the Bureau's Offender Policy Handbook constitute an adequate means for the Petitioners to obtain proper accounting for monies owed for inmate compensation. *See State ex rel. Humprey v. Jago*, 660 N.E.2d 1206, 74 Ohio

⁵ Neither Simon's Petition for Writ of Mandamus nor Respondent's motions filed in response thereto specifically address whether or not Simon has exhausted his administrative remedies vis-à-vis the Bureau's Offender Policy Handbook. As an inmate at Golden Grove Adult Correctional Facility, he is required to do so before petitioning this Court. It is settled law in this jurisdiction that, "the party requesting a writ of mandamus bears the burden of proving that issuance of such a writ is warranted." *In re Morton*, 56 V.I. 313, 320, 2012 V.I. Supreme LEXIS 13, 11, 2012 WL 653786 (VI. 2012). As exhaustion of administrative remedies is necessary for a Writ of Mandamus, and Simon has not met this burden, his petition fails this necessary requirement.

St.3d 675 (1996) (finding that inmate grievance procedure constituted adequate legal remedy to obtain release of funds). The Bureau of Corrections Offender Policy Handbook Policy #3500 sets forth “an internal grievance mechanism for the resolution of complaints arising from institutional matters, so as to reduce the need for litigation and afford staff the opportunity to improve facility operations.” Harris Resp’t Mot. to Dismiss Attach., at 14. Policy #3500 provides that “[a]n offender may file a grievance at any time to bring a problem to the attention of staff or to appeal a specific action[.]” *Id.* The delineated “Bases for Grievances” include “alleged violation[s] of civil, constitutional, or statutory rights, or of policy,” and the Handbook provides for both informal and formal resolution processes, the latter of which comprises evaluation by a Grievance Board. *Id.* at 14, 16. Policy #3500 includes forms for informal and formal grievances, and additionally provides for an appeals process to review decisions by the Grievance Board. *Id.* at 19, 17. There is no indication that any of the Petitioners filed a formal or informal grievance pursuant to this process to ensure that the funds are properly credited to their respective accounts. Accordingly, Petitioners have failed to exhaust their administrative remedies under the Bureau’s Offender Policy Handbook. *See In re LeBlanc*, 49 V.I. 508, 517 (“[w]here there are practical avenues for seeking relief that are untried, this Court will ordinarily deny a petition for mandamus.”).

Furthermore, even if Petitioners had filed grievances under the Bureau’s Offender Handbook, the extraordinary remedy of Writ of Mandamus, “one of the most potent weapons in the judicial arsenal,” would still not be the appropriate mechanism by which to obtain relief. *In re LeBlanc*, 49 V.I. at 508, quoting *Cheney v. U. S. Dist. Court for the D. C.*, 542 U.S. 367, 380-381, 124 S. Ct. 2576, 159 L. Ed. 2d 459 (2004). Rather, Petitioners could have

brought other less drastic causes of action, such as breach of contract or action for debt, against Respondents. *See generally Bryan v. Fawkes, supra.* (Petition for Writ of Mandamus denied when Petitioner failed to establish that he could not have obtained the desired relief through an action for declaratory judgment). Thus, because Petitioners have failed to exhaust their administrative remedies under the Bureau's Offender Policy Handbook and could have brought more appropriate causes of action, they have not established that they have no other means to obtain the release of funds.

B. Petitioners' Rights to their Alleged Amounts of Inmate Compensation are Not Clear and Undisputable

The Court also finds that Petitioners have not demonstrated that they have a clear and undisputable right to their respective alleged amounts of money for inmate compensation. "A party possesses a 'clear and indisputable' right when the relief sought constitutes a 'specific, ministerial act, devoid of the exercise of judgment or discretion.'" *In re People of the Virgin Islands*, 51 V.I. 374, 387 (V.I. 2009). The Supreme Court of the United States has further clarified the sort of act envisioned by this category as "one that is inevitable and foreordained under state law." *Ramdass v. Angelone*, 530 U.S. 156, 181, 120 S. Ct. 2113, 2127, 147 L. Ed. 2d 125, 145 (2000). Assuming, without deciding, that Petitioners have performed services entitling them to their alleged amounts of compensation, they have not provided any evidence that the Bureau is not entitled to withdraw funds from their accounts to satisfy any of the obligations listed in section 4509(k)(1)-(5). For the Court to ascertain such would implicate a level of discovery inappropriate to a Writ of Mandamus.

Also, section 4509(k)(5) clearly provides that Petitioners are entitled to a return of the funds and a proper accounting only after "the completion of [their] sentence[s] or . . .

release on parole by the Bureau." Simon and Rodriguez have neither completed their sentences nor have they been released on parole by the Bureau.⁶ Thus, they are unable to demonstrate that they possess a clear and undisputable right to their requested amounts of inmate compensation.

Accordingly, the relief requested by Petitioners is neither inevitable nor foreordained, and their petitions thus also fail to satisfy the second requirement for the issuance of a writ of mandamus.

IV. CONCLUSION

None of the five Petitioners have established that they are entitled to the extraordinary writ of mandamus. Accordingly, the Court will grant the Bureau's motions to dismiss and will dismiss each of the petitions filed in this case. An appropriate order follows.

Date: March 4, 2015

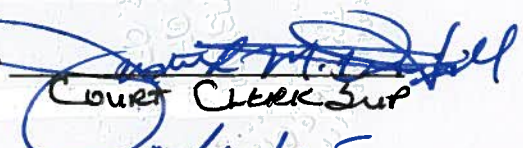


ROBERT A. MOLLOY
Judge of the Superior Court

ATTEST:

ESTRELLA H. SCORSE

Atty Clerk of the Court

By: 

Court Clerk Sup

Dated: 3/6/15

⁶ The Court does not have information regarding the incarceration status of the other three Petitioners.