

**UNPUBLISHED**

UNITED STATES COURT OF APPEALS  
FOR THE FOURTH CIRCUIT

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**No. 00-6979**

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In Re: DAVID ELIJAH SMITH,

Petitioner.

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On Petition for Writ of Mandamus.  
(CR-93-16, CA-98-157-3-BO)

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Submitted: September 8, 2000                      Decided: September 22, 2000

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Before LUTTIG and KING, Circuit Judges, and HAMILTON, Senior Circuit Judge.

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Petition denied by unpublished per curiam opinion.

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David Elijah Smith, Petitioner Pro Se.

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Unpublished opinions are not binding precedent in this circuit.  
See Local Rule 36(c).

PER CURIAM:

David Elijah Smith has filed a petition for writ of mandamus seeking this court to compel the district court to provide him with a ruling on the merits regarding an issue he previously raised in a motion brought pursuant to 28 U.S.C.A. § 2255 (West Supp. 2000). Mandamus is a drastic remedy, only to be granted in extraordinary circumstances. See In re Beard, 811 F.2d 818, 826 (4th Cir. 1987) (citing Kerr v. United States Dist. Court, 426 U.S. 394 (1976)). The party seeking mandamus relief has the heavy burden of showing that he has no other adequate avenues of relief and that his right to the relief sought is "clear and indisputable." Mallard v. United States Dist. Court, 490 U.S. 296, 309 (1989) (quoting Bankers Life & Casualty Co. v. Holland, 346 U.S. 379, 384 (1953)); Beard, 811 F.2d at 826. Courts are extremely reluctant to grant a writ of mandamus, and the decision is within the discretion of the court addressing the application for the writ. See Beard, 811 F.2d at 827 (citations omitted).

We find that Smith has not met his burden of proof such that mandamus is the proper remedy in this situation. Mandamus is not a substitute for appeal, In re United Steelworkers, 595 F.2d 958, 960 (4th Cir. 1979), and Smith's right to relief by way of mandamus is not clear. See Mallard, 490 U.S. at 309; In re First Fed. Sav. & Loan Ass'n, 860 F.2d 135, 138 (4th Cir. 1988). Accordingly, we grant Smith's motion to proceed in forma pauperis, and we deny

Smith's request for mandamus. We dispense with oral argument because the facts and legal contentions are adequately presented in the materials before the court and argument would not aid the decisional process.

PETITION DENIED