UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 00-7640

In Re: PHILLIP M. PROPST,

Petitioner.

On Petition for Writ of Mandamus.

Submitted: February 22, 2001 Decided: March 1, 2001

Before WIDENER and WILLIAMS, Circuit Judges, and HAMILTON, Senior Circuit Judge.

Petition denied by unpublished per curiam opinion.

Phillip M. Propst, Petitioner Pro Se.

Unpublished opinions are not binding precedent in this circuit.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

PER CURIAM:

Phillip Propst has filed a petition for a writ of mandamus from this court seeking to challenge his state conviction. Mandamus is a drastic remedy to be used only in extraordinary circumstances. Kerr v. United States Dist. Court, 426 U.S. 394, 402 (1976). Mandamus relief is only available when there are no other means by which the relief sought could be granted, In re Beard, 811 F.2d 818, 826 (4th Cir. 1987), and may not be used as a substitute for appeal. In re Catawba Indian Tribe, 973 F.2d 1133, 1135 (4th Cir. 1992). The party seeking mandamus relief carries the heavy burden of showing that he has "no other adequate means to attain the relief he desires" and that his entitlement to such relief is "clear and indisputable." Allied Chem. Corp. v. Daiflon, Inc., 449 U.S. 33, 35 (1980). Propst has not made such a showing. A petition filed pursuant to 28 U.S.C.A. § 2254 (West 1994 & Supp. 2000) is the proper vehicle to attack his conviction. Propst has previously filed such a petition. Accordingly, we deny Propst's motion to proceed in forma pauperis and his petition for mandamus relief. 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