

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 02-7092

In Re: MATTHEW DAVIS,

Petitioner.

On Petition for Writ of Mandamus.
(CA-99-842-1, CR-95-284)

Submitted: September 5, 2002

Decided: September 11, 2002

Before MOTZ, KING, and GREGORY, Circuit Judges.

Petition denied by unpublished per curiam opinion.

Matthew Davis, Petitioner Pro Se.

Unpublished opinions are not binding precedent in this circuit.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

PER CURIAM:

Matthew Davis has filed a petition for a writ of mandamus requesting that this court order the district court to "assume jurisdiction of his equitable claim seeking injunctive relief effectuating an investigation" into trial counsel's alleged conflict of interest and the Government's alleged misconduct. "The granting of a writ of mandamus is a drastic remedy to be used only in extraordinary circumstances." In re Beard, 811 F.2d 818, 826-27 (4th Cir. 1987). A petitioner must show that he has a clear right to the relief sought, that the respondent has a clear duty to perform the act requested by petitioner, and that there is no other adequate remedy available. In re First Fed. Sav. & Loan Ass'n, 860 F.2d 135, 138 (4th Cir. 1988).

We find that Davis has failed to make the requisite showing of extraordinary circumstances justifying mandamus relief because he cannot show that there is no other adequate remedy available. Davis is essentially seeking review of the lower court's denial of a motion to compel, which he filed along with a 28 U.S.C. § 2255 (2000) motion in the district court. We note that Davis's appeal of this order is currently pending before this court. Accordingly, we deny leave to proceed in forma pauperis, deny his motion for appointment of counsel, and deny his petition for a writ of 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