

UNPUBLISHED

**UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT**

KENNETH BURTON,
Petitioner-Appellant,

v.

SOUTH CAROLINA DEPARTMENT OF
CORRECTIONS; STATE OF SOUTH
CAROLINA; COLIE RUSHTON, Warden,
Respondents-Appellees.

No. 03-7254

Appeal from the United States District Court
for the District of South Carolina, at Greenville.
Henry M. Herlong, Jr., District Judge.
(CA-03-1376-6-20AK)

Submitted: December 18, 2003

Decided: January 22, 2004

Before LUTTIG, SHEDD, and DUNCAN, Circuit Judges.

Affirmed by unpublished per curiam opinion.

COUNSEL

Kenneth Burton, Appellant Pro Se. Donald John Zelenka, Chief Deputy Attorney General, Columbia, South Carolina, for Appellees.

Unpublished opinions are not binding precedent in this circuit.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

OPINION

PER CURIAM:

Kenneth Burton appeals the district court's denial of his petition for a writ of mandamus challenging his continued custody after the state appeals court overturned his convictions. The district court denied the petition because the South Carolina Supreme Court had granted certiorari and further review was pending. After Burton noted an appeal to this court, the South Carolina Supreme Court reinstated several of his convictions. *State v. Burton*, 2003 WL 22474588 (S.C. Nov. 3, 2003) (unpublished).

To the extent the district court considered Burton's mandamus petition to be a petition for writ of habeas corpus, the court properly concluded that Burton had not exhausted state remedies. *See Braden v. 30th Judicial Circuit Court*, 410 U.S. 484, 490 (1973). To the extent Burton sought a writ of mandamus, such relief was not warranted because mandamus relief is available only when the petitioner has a clear right to the relief sought, *see In re First Fed. Sav. & Loan Assn.*, 860 F.2d 135, 138 (4th Cir. 1988), and may not be used as a substitute for appeal, *see In re United Steelworkers*, 595 F.2d 958, 960 (4th Cir. 1979). Moreover, lower federal courts do not have jurisdiction to grant mandamus relief against state officials, *see Gurley v. Superior Court of Mecklenburg County*, 411 F.2d 586, 587 (4th Cir. 1969), and do not have jurisdiction to review state court orders, *see District of Columbia Court of Appeals v. Feldman*, 460 U.S. 462, 482 (1983).

Accordingly, we affirm the district court's denial of Burton's petition. 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.

AFFIRMED