

**UNPUBLISHED**

UNITED STATES COURT OF APPEALS  
FOR THE FOURTH CIRCUIT

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**No. 05-6150**

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In Re: KELVIN ANDRE SPOTTS, a/k/a Shorty,

Petitioner.

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On Petition for Writ of Mandamus. (CR-98-47; CA-00-647)

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Submitted: March 9, 2005

Decided: March 30, 2005

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Before NIEMEYER, WILLIAMS, and MOTZ, Circuit Judges.

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Petition denied by unpublished per curiam opinion.

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Kelvin Spotts, Petitioner Pro Se.

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Unpublished opinions are not binding precedent in this circuit.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

PER CURIAM:

Kelvin Andre Spotts seeks a writ of mandamus to compel the district court to apply United States v. Booker, 125 S. Ct. 738 (2005), and Blakely v. Washington, 124 S. Ct. 2531 (2004), retroactively to his case. 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 available only 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. The party seeking mandamus relief bears 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). Spotts fails to make the requisite showing. Accordingly, we grant leave to proceed in forma pauperis and deny Spotts' petition for 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