

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 05-7381

In Re: BERNARD SMITH,

Petitioner.

On Petition for Writ of Mandamus.

Submitted: November 22, 2005

Decided: December 7, 2005

Before MOTZ, TRAXLER, and GREGORY, Circuit Judges.

Petition denied by unpublished per curiam opinion.

Bernard Smith, Petitioner Pro Se.

Unpublished opinions are not binding precedent in this circuit.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

PER CURIAM:

Bernard Smith petitions for a writ of mandamus. He seeks an order requiring the Bureau of Prisons to accept his state substance abuse program and promote him to the next pay grade for prison employment.

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). Further, mandamus is a drastic remedy and should only be used in extraordinary circumstances. See Kerr v. United States Dist. Court, 426 U.S. 394, 402 (1976); In re Beard, 811 F.2d 818, 826 (4th Cir. 1987). Mandamus may not be used as a substitute for appeal. See In re United Steelworkers, 595 F.2d 958, 960 (4th Cir. 1979).

The relief sought by Smith is not available by way of mandamus. Accordingly, we deny the petition for writ of mandamus. We grant Smith leave to proceed in forma pauperis and deny his motion for appointment of counsel. 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