

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 06-6213

In Re: RODNEY EUGENE SMITH,

Petitioner.

On Petition for Writ of Mandamus.
(CR-01-7)

Submitted: March 23, 2006

Decided: March 31, 2006

Before WILKINSON, LUTTIG, and WILLIAMS, Circuit Judges.

Rodney Eugene Smith, Petitioner Pro Se.

Petition denied by unpublished per curiam opinion.

Unpublished opinions are not binding precedent in this circuit.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

PER CURIAM:

Rodney Eugene Smith petitions for writ of mandamus and/or prohibition seeking an order directing the district court to declare his criminal case "void ab initio." 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 be used only 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, although we grant leave to proceed in forma pauperis, we deny the petition for writ of mandamus and/or prohibition. 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