

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 06-6558

In Re: DWIGHT SPENCER,

Petitioner.

On Petition for Writ of Mandamus.

Submitted: September 29, 2006 Decided: October 23, 2006

Before WILKINSON, KING, and DUNCAN, Circuit Judges.

Petition denied by unpublished per curiam opinion.

Dwight Spencer, Petitioner Pro Se.

Unpublished opinions are not binding precedent in this circuit.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

PER CURIAM:

Dwight Spencer petitions for a writ of mandamus seeking an order from this court directing the clerk of the United States District Court for the Eastern District of Virginia to file his pro se motion to show cause. In the motion to show cause, Spencer seeks to require the Government to explain why money confiscated from his person in 1997 was forfeited, and why he did not receive notice of the forfeiture. The district court clerk responded to the mandamus petition, explaining that the documentation appended to Spencer's mandamus petition shows that he mailed the order to show cause to the Asset Forfeiture Section of the Drug Enforcement Administration, not to the district court. The district court's records do not reflect that the court ever received any filing from Spencer.

Mandamus relief is available only when the petitioner has a clear right to the relief sought. In re First Fed. Sav. & Loan Ass'n, 860 F.2d 135, 138 (4th Cir. 1988). Further, mandamus is a drastic remedy and should be used only in extraordinary circumstances. Kerr v. United States Dist. Court, 426 U.S. 394, 402 (1976); In re Beard, 811 F.2d 818, 826 (4th Cir. 1987). We conclude that because Spencer did not mail his show cause order to the district court, he has not met his burden of showing that his right to the relief sought in his mandamus petition is "clear and indisputable." Allied Chem. Corp. v. Daiflon, Inc., 449 U.S. 33, 35 (1980) (citations omitted).

Accordingly, although we grant leave to proceed in forma pauperis, we deny the 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