

UNPUBLISHED

UNITED STATES COURT OF APPEALS  
FOR THE FOURTH CIRCUIT

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No. 06-7530

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In Re: JAMES E. MACDONALD,

Petitioner.

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On Petition for a Writ of Mandamus.  
(2:06-cv-1013-PMD)

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Submitted: February 22, 2007

Decided: March 1, 2007

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Before WILLIAMS, MOTZ, and SHEDD, Circuit Judges.

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Petition denied by unpublished per curiam opinion.

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James E. MacDonald, Petitioner Pro Se.

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Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

James E. MacDonald petitions for a writ of mandamus directing the district court to grant MacDonald's motion to vacate, 28 U.S.C. § 2255 (2000), because the Government filed an untimely response to his motion. We conclude that MacDonald is not entitled to mandamus relief.

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 only be used 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).

Mandamus may not be used as a substitute for appeal. In re United Steelworkers, 595 F.2d 958, 960 (4th Cir. 1979). Therefore, the relief sought by MacDonald is not available by way of mandamus. Accordingly, 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