

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 08-1346

In Re: OBED HOYTE,

Petitioner.

On Petition for Writ of Mandamus.
(3:93-cr-00010-jpj-mfu-1; 3:07-cv-80005-jpj-mfu)

Submitted: July 31, 2008

Decided: August 7, 2008

Before NIEMEYER, TRAXLER, and GREGORY, Circuit Judges.

Petition denied by unpublished per curiam opinion.

Obed Hoyte, Petitioner Pro Se.

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

Obed Hoyte petitions for a writ of mandamus or, in the alternative, an extension of time to file a motion pursuant to 28 U.S.C. § 2255 (2000). We conclude that Hoyte is not entitled to the relief sought.

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).

The relief sought by Hoyte is not available by way of mandamus. Nor has Hoyte otherwise established entitlement to file a § 2255 motion at this juncture. Accordingly, we deny Hoyte's motion to proceed in forma pauperis, and 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