

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 09-1090

In Re: DAVID LEE SMITH,

Petitioner.

On Petition for Writ of Mandamus. (5:08-hc-02184-H)

Submitted: April 23, 2009

Decided: May 5, 2009

Before MICHAEL, GREGORY, and DUNCAN, Circuit Judges.

Petition denied by unpublished per curiam opinion.

David Lee Smith, Petitioner Pro Se.

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

David Lee Smith petitions for a writ of mandamus seeking an order to direct the district court to review the denial of his 28 U.S.C.A. § 2255 (West Supp. 2008) motion. We conclude that Smith 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 substitute for appeal. 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. 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