

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 11-1323

In re: DANIEL J. WILLIS,

Petitioner.

On Petition for Writ of Mandamus. (No. 4:10-mc-00006)

Submitted: July 18, 2011

Decided: July 26, 2011

Before WILKINSON, NIEMEYER, and MOTZ, Circuit Judges.

Petition denied by unpublished per curiam opinion.

Daniel Johnson Willis, Petitioner Pro Se.

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

Daniel Johnson Willis petitions for a writ of mandamus seeking an order compelling the district court to adjudicate pleadings he filed as a 42 U.S.C. § 1983 (2006) complaint. Willis is required to comply with a pre-filing injunction, which includes a determination that he has stated a claim before the district court may adjudicate the pleading. After Willis filed the petition, the district court entered an order denying Willis's motion for leave to file the § 1983 complaint holding that Willis had not complied with the prefiling injunction because he failed to state a legal claim. Willis amended his petition for writ of mandamus to include that the court direct the district court to adjudicate the complaint. We conclude that Willis is not entitled to mandamus relief.

Mandamus relief is a drastic remedy and should be used only in extraordinary circumstances. Kerr v. United States Dist. Court, 426 U.S. 394, 402 (1976); United States v. Moussaoui, 333 F.3d 509, 516-17 (4th Cir. 2003). Further, 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). Mandamus may not be used as a substitute for appeal. In re Lockheed Martin Corp., 503 F.3d 351, 353 (4th Cir. 2007). The relief sought in Willis's original petition is moot because the district court

ruled on the motion for leave to file while the petition was pending. Further, Willis could have appealed the order and did not do so. Therefore, mandamus is not an available remedy. See id.

Although we grant Willis's motion for 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