

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 11-2185

In Re: GARY IVAN TERRY,

Petitioner.

On Petition for Writ of Mandamus.
(1:03-cr-00299-NCT; 1:09-cv-00430-NCT-PTS)

Submitted: February 28, 2012 Decided: March 27, 2012

Before TRAXLER, Chief Judge, and KING and DUNCAN, Circuit
Judges.

Petition denied by unpublished per curiam opinion.

Gary Ivan Terry, Petitioner Pro Se.

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

Gary Ivan Terry petitions for a writ of mandamus seeking an order from this court directing the district court judge to vacate its orders denying Terry's 28 U.S.C.A. § 2255 (West Supp. 2011) motion and assign his § 2255 proceedings to a different district court judge. We conclude that Terry is not entitled to 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 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). It is well-established that 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 Terry is not available by way of mandamus. Accordingly, although we grant leave to proceed in forma pauperis, we deny Terry's petition for a 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