

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 15-1452

In re: BILLY RAY SMITH,

Petitioner.

On Petition for Writ of Mandamus.
(5:15-cv-00026-FPS-RWT)

Submitted: June 18, 2015

Decided: June 22, 2015

Before SHEDD, DUNCAN, and AGEE, Circuit Judges.

Petition denied by unpublished per curiam opinion.

Billy Ray Smith, Petitioner Pro Se.

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

Billy Ray Smith, a federal prisoner, petitions for a writ of mandamus seeking an order (a) directing the district court to docket a 28 U.S.C. § 2241 (2012) petition that his "next friend" filed on his behalf, (b) dismissing his criminal case in the district court, and (c) immediately releasing him from custody. We conclude that Smith is not entitled to mandamus relief.

Mandamus relief is a drastic remedy and should be used only in extraordinary circumstances. Kerr v. U.S. 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).

Our review of the district court's docket reveals that the district court did docket the § 2241 petition filed by Smith's next friend and that such action remains pending. To the extent Smith seeks an order directing the district court to act, we deny his petition as moot. Moreover, mandamus cannot be used to dismiss a closed criminal matter in the district court or direct a prisoner's release from custody.

In sum, the relief sought by Smith is not available by way of mandamus. Accordingly, although we grant leave to proceed in forma pauperis, we deny Smith's petition for writ of mandamus

and his supplemental petitions for writs of mandamus. We dispense with oral argument because the facts and legal contentions are adequately presented in the materials before this court and argument would not aid the decisional process.

PETITION DENIED