

**UNPUBLISHED**

UNITED STATES COURT OF APPEALS  
FOR THE FOURTH CIRCUIT

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**No. 16-1489**

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In re: HOWARD SCOTT,

Petitioner.

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On Petition for Writ of Mandamus  
(2:09-cr-00991-PMD-1)

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Submitted: June 21, 2016

Decided: June 23, 2016

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Before DUNCAN, KEENAN, and THACKER, Circuit Judges.

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Petition denied by unpublished per curiam opinion.

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Howard Scott, Petitioner Pro Se.

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Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

Howard Scott petitions for a writ of mandamus, seeking an order directing the district court to hold an evidentiary hearing to address whether Amendment 709 to the Sentencing Guidelines applies to him. We conclude that Scott 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). 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 by Scott is not available by way of mandamus because Scott fails to show any clear right to relief in the form of an evidentiary hearing regarding the applicability of Amendment 709. Accordingly, although we grant leave to proceed in forma pauperis, we deny the petition for a writ 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