

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 16-1619

In re: DAVID LEE SMITH,

Petitioner.

On Petition for Writ of Mandamus.
(No. 5:15-hc-02128-D)

Submitted: September 13, 2016 Decided: September 16, 2016

Before TRAXLER, AGEE, and THACKER, 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Petition denied by unpublished per curiam opinion.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Unpublished opinions are not binding precedent in this circuit.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 directing the district court to enter an order resentencing him on his state sentence to time served, directing the United States Attorney to file a motion, and for his warden to immediately release him. 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).

Mandamus may not be used as a substitute for appeal. In re Lockheed Martin Corp., 503 F.3d 351, 353 (4th Cir. 2007). To the extent Smith seeks an order directing state officials to act, this court does not have jurisdiction to grant mandamus relief against state officials, Gurley v. Superior Court of Mecklenburg Cty., 411 F.2d 586, 587 (4th Cir. 1969), and does not have jurisdiction to review final state court orders, Dist. of Columbia Court of Appeals v. Feldman, 460 U.S. 462, 482 (1983).

The relief sought by Smith is not available by way of mandamus. Accordingly, we deny the petition for writ of mandamus and supplemental petitions. We grant permission to proceed in forma pauperis and deny Smith's motion for bail. 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