

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 97-546

In Re: ROBERT LEE DAVIS,

Petitioner.

On Petition for Writ of Mandamus. (CA-96-896-H)

Submitted: June 19, 1997

Decided: June 27, 1997

Before WILKINS and MICHAEL, Circuit Judges, and BUTZNER, Senior
Circuit Judge.

Petition denied by unpublished per curiam opinion.

Robert Lee Davis, Petitioner Pro Se.

Unpublished opinions are not binding precedent in this circuit.
See Local Rule 36(c).

PER CURIAM:

Robert Lee Davis has filed a petition for a writ of mandamus in this court seeking to reverse the district court's order denying his second petition for habeas corpus relief, under 28 U.S.C.A. § 2254 (West 1994 & Supp. 1997), and a motion for reconsideration of that order. The granting of a writ of mandamus is a drastic remedy which should only be used in extraordinary situations. In re Beard, 811 F.2d 818, 826 (4th Cir. 1987). Petitioner must show that he has a clear right to the relief sought, that the respondent has a clear duty to perform the act requested by petitioner, and that there is no other adequate remedy available. In re First Fed. Sav. & Loan Ass'n of Durham, 860 F.2d 135, 138 (4th Cir. 1988). Davis has failed to make the requisite showing for such extraordinary relief. Our review of the district court record discloses that the district court denied Davis' second habeas petition because he was no longer in custody. See 28 U.S.C.A. § 2254(a). We therefore deny his petition for writ of mandamus and deny his motion to proceed in forma pauperis. 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