

**UNPUBLISHED**

UNITED STATES COURT OF APPEALS  
FOR THE FOURTH CIRCUIT

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**No. 05-6794**

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IN RE: CLARENCE HICKS,

Petitioner.

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On Petition for Writ of Mandamus.  
(CA-02-2076-L)

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Submitted: September 29, 2005

Decided: October 11, 2005

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Before WILKINSON, KING, and GREGORY, Circuit Judges.

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Petition denied by unpublished per curiam opinion.

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Clarence Hicks, Appellant Pro Se.

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Unpublished opinions are not binding precedent in this circuit.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

PER CURIAM:

Clarence Hicks petitions this court for writ of mandamus. The district court entered an order in March 2005 dismissing Hicks's 28 U.S.C. § 2255 (2000) motion to vacate his conviction. Hicks asks us to direct the district court to address a claim of actual innocence that he claims the district court failed to consider. Hicks further states that the district court failed to file his notice of appeal.

Mandamus relief is available only when the petitioner has a clear right to the relief sought. See In re First Fed. Sav. & Loan Ass'n, 860 F.2d 135, 138 (4th Cir. 1988). Further, mandamus is a drastic remedy and should only be used in extraordinary circumstances. See Kerr v. United States Dist. Court, 426 U.S. 394, 402 (1976); In re Beard, 811 F.2d 818, 826 (4th Cir. 1987).

There is nothing here or in the district court to show that Hicks filed a notice of appeal, and he does not submit a copy of such a notice. Therefore, Hicks has not shown a clear right to have a notice of appeal filed in the district court. As to the actual innocence claim, mandamus may not be used as a substitute for appeal. See In re United Steelworkers, 595 F.2d 958, 960 (4th Cir. 1979).

Therefore, we deny the petition for 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