

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 05-7689

In Re: THOMAS E. SMOLKA,

Petitioner.

On Petition for Writ of Mandamus.
(CR-02-475)

Submitted: January 9, 2006

Decided: February 14, 2006

Before WILKINSON, NIEMEYER, and WILLIAMS, Circuit Judges.

Petition denied by unpublished per curiam opinion.

Thomas E. Smolka, Petitioner Pro Se.

Unpublished opinions are not binding precedent in this circuit.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

PER CURIAM:

Thomas E. Smolka petitions for writ of mandamus seeking an order prohibiting the district court from activating an alternate sentence, and disqualifying the district court judge from further involvement in his case. We conclude that Smolka is not entitled to mandamus relief.

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). Further, mandamus is a drastic remedy and should be used only in extraordinary circumstances. Kerr v. United States Dist. Court, 426 U.S. 394, 402 (1976); In re Beard, 811 F.2d 818, 826 (4th Cir. 1987). Mandamus may not be used as a substitute for appeal. In re United Steelworkers, 595 F.2d 958, 960 (4th Cir. 1979).

The relief sought by Smolka is not available by way of mandamus. Accordingly, although we grant leave to proceed in forma pauperis and grant Smolka's motions to amend his petition and to supplement the record, we deny the petition for writ of mandamus, deny Smolka's "emergency motion," and deny all other pending motions. 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