

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 10-2344

In Re: JAMES NIBLOCK,

Petitioner.

On Petition for Writ of Mandamus. (1:02-cr-00568-GBL-1)

No. 11-6022

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

JAMES RAYMOND NIBLOCK,

Defendant - Appellant.

No. 11-6309

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

JAMES NIBLOCK,

Defendant - Appellant.

Appeals from the United States District Court for the Eastern District of Virginia, at Alexandria. Gerald Bruce Lee, District Judge (1:02-cr-00568-GBL-1; 1:04-cv-00361-HEH)

Submitted: April 18, 2011 Decided: April 29, 2011

Before KING, DUNCAN, and KEENAN, Circuit Judges.

No. 10-2344 petition denied; Nos. 11-6022 and 11-6309 affirmed by unpublished per curiam opinion.

James Niblock, Petitioner/Appellant Pro Se.

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

In No. 10-2344, James Niblock petitions for a writ of mandamus seeking an order from this court directing the district court to rule on his motion for a new trial, or an order vacating his conviction and ordering his release from prison. We conclude that Niblock is not entitled to mandamus relief.

Mandamus relief is a drastic remedy and should be used only in extraordinary circumstances. Kerr v. United States Dist. Court, 426 U.S. 394, 402 (1976); United States v. Moussaoui, 333 F.3d 509, 516-17 (4th Cir. 2003). 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). Additionally, mandamus may not be used as a substitute for appeal. In re Lockheed Martin Corp., 503 F.3d 351, 353 (4th Cir. 2007). Because the district court has denied Niblock's motion for a new trial, his request for an order directing the district court to act is moot. To the extent that Niblock seeks an order vacating his conviction and ordering his release, mandamus relief is not available where review may be had on appeal. Accordingly, while we grant Niblock leave to proceed in forma pauperis, we deny the petition for writ of mandamus.

In No. 11-6022, Niblock seeks to appeal the district court's order denying his motions: (1) to supplement the record

in Appeals Nos. 10-7065 and 10-7066 with recently discovered evidence; (2) for a new trial and for relief from the judgment; and (3) for appointment of counsel. Appeal No. 11-6309 is Niblock's appeal from the district court's order denying his motions: (1) for a hearing on his claim to an exemption from garnishment and forfeiture; (2) for summary judgment on his Fed. R. Civ. P. 60(b) motion following the denial of his 28 U.S.C. § 2255 (2010) motion; and (3) for return of property. The district court denied all of these motions based on the reasons stated in the court's prior orders denying motions raising the same or similar claims.

We have reviewed the record and find no reversible error. Accordingly, we affirm the district court's orders. We deny as moot Niblock's motions to expedite and for release on bond pending appeal. 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.

No. 10-2344 PETITION DENIED
Nos. 11-6022 and 11-6309 AFFIRMED