

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 97-1074

In Re: PETER KAY STERN,

Petitioner.

On Petition for Writ of Mandamus. (No. CA-96-183)

Submitted: March 13, 1997

Decided: March 20, 1997

Before HALL, ERVIN, and WILKINS, Circuit Judges.

Petition denied by unpublished per curiam opinion.

Peter Kay Stern, Petitioner Pro Se.

Unpublished opinions are not binding precedent in this circuit.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

PER CURIAM:

Peter Stern filed a mandamus petition in this court after the magistrate judge recommended that Stern's civil rights action in the Western District of North Carolina be dismissed. Instead of filing objections to the magistrate judge's report and recommendation with the district court, Stern seeks a writ of mandamus to compel the clerk of the Western District of North Carolina to enter a default judgment against the Defendants.

The granting of the writ is a drastic remedy and should only be granted in extraordinary situations.¹ Stern must show that he has no other avenue for relief and that his right to relief is clear and undisputable.² Stern fails to meet his burden, and mandamus relief cannot be used as a substitute for appeal.³

Accordingly, we deny the petition. 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

¹ See In re Beard, 811 F.2d 818, 826 (4th Cir. 1987).

² See Mallard v. United States Dist. Court, 490 U.S. 296, 309 (1989).

³ See In re United Steelworkers, 595 F.2d 958, 960 (4th Cir. 1979).