

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 99-6525

In Re: FREDERICK ANTHONY CARGILL,

Petitioner.

On Petition for Writ of Mandamus. (CR-94-300)

Submitted: May 25, 1999

Decided: June 25, 1999

Before WILKINS, MICHAEL, and TRAXLER, Circuit Judges.

Petition denied by unpublished per curiam opinion.

Frederick Anthony Cargill, Petitioner Pro Se.

Unpublished opinions are not binding precedent in this circuit.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

PER CURIAM:

Frederick Cargill has filed a petition for writ of mandamus seeking to compel the district court to act on his motion for return of personal property pursuant to Fed. R. Crim. P. 41(e). Cargill stated in his petition that the Government contends the property in question was introduced as evidence at trial and should be held pending resolution of his appeal to this court. On appeal, we vacated the district court's denial of Cargill's motion for a new trial and remanded for reconsideration. See United States v. Cargill, Nos. 95-5740, 97-4434, 1998 WL 39394 (4th Cir. Feb. 2, 1998) (unpublished). The district court held a hearing to reconsider Cargill's motion for a new trial in June 1998, and Cargill has filed two additional motions since then. We therefore find no undue delay in the district court.

Mandamus is a drastic remedy to be used only in extraordinary circumstances. See Kerr v. United States Dist. Court, 426 U.S. 394, 402 (1976). Finding that Cargill's right to relief is not clear and indisputable, we deny Cargill's motion to proceed in forma pauperis and deny his petition for mandamus relief.* See Allied Chem. Corp. v. Diaflon, Inc., 449 U.S. 33, 35 (1980) (citation omitted). We dispense with oral argument because the facts and legal

* We decline to address Cargill's argument that the PLRA does not apply to this action.

contentions are adequately presented in the materials before the court and argument would not aid the decisional process.

PETITION DENIED