

**UNPUBLISHED**

UNITED STATES COURT OF APPEALS  
FOR THE FOURTH CIRCUIT

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**No. 09-1121**

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In Re: GARY IVAN TERRY,  
  
Petitioner.

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On Petition for Writs of Mandamus and Prohibition.  
(1:03-cr-00299-NCT-1)

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Submitted: June 29, 2009

Decided: July 15, 2009

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Before TRAXLER, Chief Judge, and KING and DUNCAN, Circuit  
Judges.

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Petition denied by unpublished per curiam opinion.

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Gary Ivan Terry, Petitioner Pro Se.

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Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

Gary Ivan Terry petitions for writs of mandamus and prohibition requesting this court to compel the district court to vacate its order refusing to compel specific performance of his plea agreement. We conclude that Terry is not entitled to relief.

Mandamus and prohibition relief are 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); In re Vargas, 723 F.2d 1461, 1468 (10th Cir. 1983). Further, mandamus and prohibition are drastic remedies and should be used only in extraordinary circumstances. Kerr v. United States Dist. Court, 426 U.S. 394, 402 (1976); Vargas, 723 F.2d at 1468; In re Beard, 811 F.2d 818, 826 (4th Cir. 1987). It is well-established that mandamus and prohibition may not be used as a substitute for appeal. Vargas, 723 F.2d at 1461; In re United Steelworkers, 595 F.2d 958, 960 (4th Cir. 1979).

The relief sought by Terry is not available by way of mandamus or prohibition. Accordingly, although we grant leave to proceed in forma pauperis, we deny Terry's motion for transcripts at government expense, and deny the petition for writs of mandamus and prohibition. 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