

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 17-1363

In re: HENRY EARL MILLER, a/k/a Stef, a/k/a Stefan,
Petitioner.

On Petition for Writ of Mandamus
(6:04-cr-00022-JMC-3)

Submitted: May 23, 2017

Decided: May 25, 2017

Before KING, AGEE, and WYNN, Circuit Judges.

Petition denied by unpublished per curiam opinion.

Henry Earl Miller, Petitioner Pro Se.

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

Henry Earl Miller petitions for a writ of mandamus seeking an order compelling the district court to hold a hearing on or grant his motions for a new trial, an order holding the Government in breach of the plea agreement, and vacatur of Miller's convictions from his 2005 criminal judgment. We conclude that Miller is not entitled to mandamus relief.

Mandamus relief is a drastic remedy and should be used only in extraordinary circumstances. *Kerr v. U.S. Dist. Court*, 426 U.S. 394, 402 (1976); *United States v. Moussaoui*, 333 F.3d 509, 516-17 (4th Cir. 2003). Further, 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). Mandamus may not be used as a substitute for appeal. *In re Lockheed Martin Corp.*, 503 F.3d 351, 353 (4th Cir. 2007).

The relief sought by Miller is not available by way of mandamus. Accordingly, although we grant leave to proceed in forma pauperis, we deny the petition for writ of mandamus. We dispense with oral argument because the facts and legal contentions are adequately presented in the materials before this court and argument would not aid the decisional process.

PETITION DENIED