

ARKANSAS SUPREME COURT

No. 08-392

KIARA SMITH
Petitioner

v.

HON. ROBERT WYATT, JR.,
CIRCUIT JUDGE
Respondent

Opinion Delivered May 8, 2008

PRO SE PETITION FOR WRIT OF
MANDAMUS AND AMENDED
PETITION FOR WRIT OF
MANDAMUS [CIRCUIT COURT OF
JEFFERSON COUNTY, CV 2008-47]

PETITION AND AMENDED
PETITION DENIED.

PER CURIAM

On January 14, 2008, petitioner Kiara Smith, a prisoner incarcerated in the Arkansas Department of Correction, filed a petition for writ of habeas corpus in Jefferson County Circuit Court. On March 27, 2008, petitioner filed the petition for writ of mandamus now before this court. He later filed an amendment to that petition.

In the petition, petitioner requests that we issue the writ to require Hon. Robert Wyatt, Jr., as the presiding judge in the habeas action, to “bring Petitioner before the court for a proceeding.” In his amendment, petitioner seeks a certification under Ark. R. Civ. P. 54(b)(1). We deny the petition for writ of mandamus and the amended petition because petitioner has not shown a clear right to the relief he seeks.

The petition in circuit court is styled as a petition for writ of habeas corpus under Ark. Code Ann. §§ 16-112-101–16-112-123 (Repl. 2006). Petitioner requested a hearing, and appears to allege that he has not received one. However, in his petition and amended petition to this court, petitioner

states no basis under which he believes that he is entitled to a hearing.

The purpose of a writ of mandamus is to enforce an established right or to enforce the performance of a duty. *Manila School Dist. No. 15 v. Wagner*, 357 Ark. 20, 159 S.W.3d 285 (2004). It is issued only to compel an officer or judge to take some action. *Arkansas Democrat-Gazette v. Zimmerman*, 341 Ark. 771, 20 S.W.3d 301 (2000). A petitioner must show a clear and certain right to the relief sought and the absence of any other adequate remedy when requesting a writ of mandamus. *Id.* at 777, 20 S.W.3d at 304. A mandamus is not a writ of right, but is within the discretion of the court. *Robertson v. Norris*, 360 Ark. 591, 203 S.W.3d 82 (2005).

Mandamus is an appropriate remedy when a public officer is called upon to do a plain and specific duty, which is required by law and which requires no exercise of discretion or official judgment. *Axley v. Hardin*, 353 Ark. 529, 110 S.W.3d 766 (2003). Although the writ cannot be used to control or review matters of discretion, it may be used to force an official to exercise that discretion. *Johnson v. Hargrove*, 362 Ark. 649, 210 S.W.3d 79 (2005).

Here, petitioner did not request a separate resolution to the question of whether he is entitled to a hearing in the circuit court. To the extent that he attempts to make that request through his amended petition, we note that, even if petitioner had moved for certification under Rule 54(b)(1), a separate ruling is discretionary and would not apply to petitioner's case, as it does not involve either multiple parties or multiple claims for relief.

The duty petitioner ultimately seeks to compel is the grant of a hearing; his only prayer for relief in the original petition is to be brought before the court to conduct a hearing. But, petitioner has not established that he is entitled to a hearing, that the grant of a hearing is not within the discretion of the circuit court. In fact, a hearing is not required in a habeas proceeding. *Mackey v.*

Lockhart, 307 Ark. 321, 819 S.W.2d 702 (1991). Petitioner has not shown that he has an established right to the relief requested.

Petition denied.