[DO NOT PUBLISH]

IN THE UNITED STATES COURT OF APPEALS

FOR THE ELEVENTH CIRCUIT

No. 18-11700
Non-Argument Calendar

D.C. Docket No. 1:18-cv-00056-WLS-TQL

CHRISTOPHER WHITMAN,

Plaintiff-Appellant,

versus

CLERK OF COURT,
United States District Court for the Middle District of Georgia,

Defendant-Appellee.

Appeal from the United States District Court
for the Middle District of Georgia

(September 18, 2019)

Before BRANCH, GRANT, and FAY, Circuit Judges.

PER CURIAM:

Christopher Whitman was convicted of 43 counts of wire fraud, 5 counts of bribery, 1 count of theft of government property, 4 counts of obstruction of justice, and 1 count of destruction of records in a federal investigation. Whitman was sentenced to 264 months' imprisonment, and he appealed.

At various times while his direct criminal appeal was pending, Whitman, then represented by counsel, attempted to file *pro se* various documents in the district court. These filings included a Rule 33 motion for a new trial[1] and allegations of conflicts of interest with counsel. The district court clerk turned away each filing with this message: "Pursuant to Local Rule 5.5, the Clerk may not accept pro se filings from represented parties." Rule 5.5 of the Local Rules of the United States District Court for the Middle District of Georgia ("Local Rule 5.5") is titled "Hybrid Representation" and provides:

> In any case where a party is represented by counsel, the Clerk shall not accept pro se briefs, pleadings, or other papers for filing from the represented party. The Clerk shall acknowledge receipt and notify the party that the documents are not being filed. The Clerk shall forward the documents to the party's attorney of record. The Court will accept pro se motions in proper form addressing the removal of counsel.

Before this Court on his direct criminal appeal, Whitman also filed a *pro se* motion to stay the appeal. His counsel filed an emergency motion to withdraw and to continue the scheduled oral argument. Counsel had received, pursuant to Local

[1] "Upon the defendant's motion, the court may vacate any judgment and grant a new trial if the interest of justice so requires." Fed. R. Crim. P. 33(a).

Rule 5.5, the various filings Whitman attempted to lodge in the district court. As noted, some of these filings included allegations of actual conflicts of interest with counsel. This Court denied both motions.

One week later, Whitman filed the instant petition in the district court. He asserted the district court's clerk's refusal to docket his filings constituted a denial of due process. He said his attorneys had "not communicated with him in nearly three years" and thus could not be depended on to file anything. He asked the court to "issue a writ of mandamus directing the clerk to docket" the filings.[2]

The district court denied Whitman's mandamus petition. Quoting *Cross v. United States*, 893 F.2d 1287, 1291–92 (11th Cir. 1990), the district court noted that we have "held repeatedly that an individual does not have a right to hybrid representation." We further explained in *Cross* that "the decision to permit a defendant to proceed as co-counsel rests in the sound discretion of the trial court." *Id.* at 1292. The district court thus concluded that because Whitman had never obtained permission to file his *pro se* motions or to engage in hybrid

[2] To be more specific: Whitman asserts one of the jurors contacted Whitman's brother and offered to accept a bribe to alter the verdict. He says his attorney told him not to mention it to anyone and then did not raise the issue on appeal. It was out of "desperation" that Whitman sought mandamus to have these issues considered by the district court.

representation, he failed to show he was entitled to mandamus relief. Whitman appeals.[3]

The "district courts . . . have original jurisdiction of any action in the nature of mandamus to compel an officer or employee of the United States or any agency thereof to perform a duty owed to the plaintiff." 28 U.S.C. § 1361. We review a district court's denial of a mandamus petition for abuse of discretion. *See In re Stewart*, 641 F.3d 1271, 1275 (11th Cir. 2011). "[M]andamus is an extraordinary remedy which should be utilized only in the clearest and most compelling of cases." *Cash v. Barnhart*, 327 F.3d 1252, 1257 (11th Cir. 2003) (quoting *Carter v. Seamans*, 411 F.2d 767, 773 (5th Cir. 1969)). Issuance of the writ is appropriate only "when: (1) the plaintiff has a clear right to the relief requested; (2) the defendant has a clear duty to act; and (3) 'no other adequate remedy [is] available.'" *Id.* at 1258 (quoting *Jones v. Alexander*, 609 F.2d 778, 781 (5th Cir. 1980)).

The district court did not abuse its discretion in denying Whitman's mandamus petition. The district court never permitted Whitman to engage in hybrid representation or to file anything *pro se*. Accordingly, Local Rule 5.5 barred the clerk from accepting any filing that did not deal with removal of

[3] Whitman moved for reconsideration. The district court denied the motion, and Whitman did not amend his notice of appeal to include the denial. Nor does he discuss the issue in his briefing. Accordingly, we do not review the ruling on that motion.

counsel. Thus, the clerk had no clear duty to accept such filings, and Whitman had no clear right to have them docketed.

Further, Whitman is incorrect in contending that 28 U.S.C. § 1654 overrides Local Rule 5.5. Section 1654 provides, "In all courts of the United States the parties may plead and conduct their own cases personally *or* by counsel . . ." (emphasis added). "Courts have consistently interpreted this statute as stating a defendant's rights in the disjunctive." *United States v. Daniels*, 572 F.2d 535, 540 (5th Cir. 1978); *see also Cross*, 893 F.2d at 1291–92. Local Rule 5.5 does not abridge any right conferred by § 1654. Under Local Rule 5.5, Whitman did not lose his right to defend the case "personally *or* by counsel."

To the extent Whitman's putative filings were "in proper form" and "address[ed] the removal of counsel," *see* Local Rule 5.5, Whitman still has no right to mandamus relief. At least one other adequate remedy is or was available as an alternative to the filings Whitman wants docketed. 28 U.S.C. § 2255(a) allows a federal prisoner to have his sentence vacated, set aside, or corrected if "the sentence was imposed in violation of the Constitution or laws of the United States." Congress has thus provided a mechanism to pursue claims of constitutionally deficient performance of counsel or other constitutional errors in a criminal proceeding.[4] Whitman also had the opportunity to have his counsel

[4] We express no view on any aspect of any potential § 2255 motion.

withdraw, for the reasons stated in the instant petition, on appeal before this Court. This Court denied his counsel's motion, *see* Doc. 90 (No. 15-14846), and affirmed his conviction, *see United States v. Whitman*, 887 F.3d 1240, 1250 (11th Cir. 2018).

Whitman is not entitled to the "extraordinary remedy" of mandamus. *Cf. Cash*, 327 F.3d at 1257. The judgment of the district court is **AFFIRMED.**