

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 06-7090

In Re: VINCENT MISSOURI,

Petitioner.

On Petition for Writ of Mandamus
(6:00-cr-00498-MBS; 6:05-cv-01598-MBS)

Submitted: July 20, 2006

Decided: July 28, 2006

Before WIDENER and WILKINSON, Circuit Judges, and HAMILTON, Senior
Circuit Judge.

Petition denied by unpublished per curiam opinion.

Vincent Missouri, Petitioner Pro Se.

Unpublished opinions are not binding precedent in this circuit.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

PER CURIAM:

Vincent Missouri petitions for a writ of mandamus. He seeks an order directing the district court to act on his motion for reconsideration, and asks this court vacate the dismissal of his motion for collateral review pursuant to 28 U.S.C. § 2255 (2000). He also requests leave to file an oversize mandamus petition. We grant Missouri's motion to file an oversize petition, but conclude that Missouri is not entitled to mandamus relief.

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). Further, mandamus is a drastic remedy and should only be used in extraordinary circumstances. Kerr v. United States Dist. Court, 426 U.S. 394, 402 (1976); In re Beard, 811 F.2d 818, 826 (4th Cir. 1987).

With respect to Missouri's request that the district court act on his motion for reconsideration, our review of the docket sheet reveals that the district court denied the motion in May 2006. Because the district court recently acted, this portion of Missouri's mandamus petition is moot. With respect to the request that we direct the district court to vacate its order dismissing his § 2255 motion, we note that mandamus may not be used as a substitute for appeal. In re United Steelworkers, 595 F.2d 958, 960 (4th Cir. 1979). Because the relief sought by Missouri is not available by way of mandamus, we deny the petition. 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