

UNPUBLISHED

UNITED STATES COURT OF APPEALS  
FOR THE FOURTH CIRCUIT

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**No. 07-6172**

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In Re:        DAVID LEE SMITH,

Petitioner.

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On Petition for Writ of Mandamus.  
(No. 5:06-hc-02061-BO)

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Submitted:    April 19, 2007

Decided:     April 25, 2007

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Before NIEMEYER, KING, and GREGORY, Circuit Judges.

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Petition denied by unpublished per curiam opinion.

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David Lee Smith, Petitioner Pro Se.

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Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

David Lee Smith petitions for a writ of mandamus seeking an order directing the district court to grant a writ of habeas corpus and vacate his state convictions for breaking and entering, larceny, and habitual felon status. We conclude that Smith 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). Mandamus may not be used as a substitute for appeal. In re United Steelworkers, 595 F.2d 958, 960 (4th Cir. 1979). Smith has noted an appeal of the district court's order denying his 28 U.S.C. § 2254 (2000) petition.

The relief sought by Smith 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 the court and argument would not aid the decisional process.

PETITION DENIED