

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 07-6399

In Re: DWAYNE DELESTON,

Petitioner.

On Petition for Writ of Mandamus.
(2:02-cv-03895-DCN)

Submitted: July 24, 2007

Decided: July 30, 2007

Before WILKINSON, TRAXLER, and DUNCAN, Circuit Judges.

Petition denied by unpublished per curiam opinion.

Dwayne Deleston, Petitioner Pro Se.

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

Dwayne Deleston petitions for a writ of mandamus seeking an order directing the district court to conduct an evidentiary hearing on his motion to amend a prior 28 U.S.C. § 2255 (2000) motion. We conclude that Deleston 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).

The relief sought by Deleston is not available by way of mandamus. Accordingly, although we grant Deleston's motion 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