

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 08-1326

In Re: NORWOOD COOK,
Petitioner.

On Petition for Writ of Mandamus. (5:02-cr-30087-jpj-mfu-1)

Submitted: March 28, 2008 Decided: April 16, 2008

Before MICHAEL, TRAXLER, and SHEDD, Circuit Judges.

Petition denied by unpublished per curiam opinion.

Norwood Cook, Petitioner Pro Se.

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

Norwood Cook petitions for a writ of mandamus seeking an order to compel the district court to enforce his plea agreement. We conclude that Cook is not entitled to mandamus relief and deny his petition.

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 be used only 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).

Cook alleges the Government breached his plea agreement when it used self-incriminating evidence against him in the presentence investigation report. However, we previously denied Cook relief on this claim when he asserted it in a 28 U.S.C. § 2255 (2000) motion. The district court properly construed Cook's complaint as a § 2255 motion and dismissed it as successive because Cook sought recalculation of his guidelines sentence, and such challenges to the fact or duration of confinement should be asserted in a habeas corpus proceeding. See Preiser v. Rodriguez, 411 U.S. 475, 487 (1973). The relief Cook seeks is not available by way of mandamus. Accordingly, we deny the petition for writ of mandamus.

To the extent that Cook's writ of mandamus could be construed as a motion for authorization to file a successive § 2255 motion, we deny such authorization. See In re Williams, 330 F.3d 277, 281-82 (4th Cir. 2003). 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