

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 08-2190

In Re: MARK A. WARD,

Petitioner.

On Petition for Writ of Mandamus. (1:08-cv-00054-WO-PTS)

Submitted: February 12, 2009

Decided: March 13, 2009

Before MICHAEL and SHEDD, Circuit Judges, and HAMILTON, Senior Circuit Judge.

Petition denied by unpublished per curiam opinion.

Mark A. Ward, Petitioner Pro Se.

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

Mark A. Ward petitions for a writ of mandamus seeking an order setting aside the district court's judgment and compelling the clerk of that court to follow internal office protocol in assigning cases to district judges. We conclude that Ward 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), which is the proper avenue for Ward to pursue setting aside the district court judgment. In fact, Ward has filed a direct appeal of the judgment, which is currently pending in this court.

Regarding Ward's request that this court intervene in the clerk's assignment of cases, Ward fails to meet his burden of showing that his right to issuance of the writ is clear and indisputable. See Beard, 811 F.2d at 826. Ward's petition does not show that the clerk failed to comply with a clear duty in

making the judicial assignment in Ward's case. See In re Braxton, 258 F.3d 250, 261 (4th Cir. 2001).

The relief sought by Ward 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