UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 08-2351

In Re: CHARLES KEITH,

Petitioner.

On Petition for Writ of Mandamus. (1:97-cr-00004-IMK-JSK-1)

Submitted: March 13, 2009 Decided: April 6, 2009

Before NIEMEYER, TRAXLER, and SHEDD, Circuit Judges.

Petition denied by unpublished per curiam opinion.

Charles Keith, Petitioner Pro Se.

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

After this court in 2005 vacated seven of the eighteen counts on which Charles Keith was convicted in 1997, the district court denied Keith's motion for resentencing. Keith now has filed a petition for writ of mandamus seeking an order compelling the district court to strike the vacated counts from his judgment, refund the special assessment imposed on the vacated counts, and resentence him under the advisory federal sentencing guidelines. We conclude that Keith is not entitled to mandamus relief.

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). Mandamus relief is available only where there is no other available remedy. In re Braxton, 258 F.3d 250, 261 (4th Cir. 2001). Because Keith had other means of pursuing the relief he sought, namely to file an appeal from the district court's order denying his motion for resentencing, mandamus relief is not available.

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