

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 08-2360

In Re: HERBERT CHAVIS,

Petitioner.

On Petition for Writ of Mandamus. (3:08-cv-00501-GCM)

Submitted: March 13, 2009

Decided: March 25, 2009

Before KING, DUNCAN, and AGEE, Circuit Judges.

Petition denied by unpublished per curiam opinion.

Herbert Chavis, Petitioner Pro Se.

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

Herbert Chavis petitions for a writ of mandamus seeking an order compelling the district court to conduct an evidentiary hearing in a 28 U.S.C. § 2254 (2006) action that the district court previously dismissed without prejudice. We conclude that Chavis 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 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). It is available only where there is no other available remedy. In re Braxton, 258 F.3d 250, 261 (4th Cir. 2001). Because Chavis had other means of obtaining relief, namely to file an appeal from the district court's order, 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