

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 09-1128

In Re: THEODORE THOMAS WAGNER,

Petitioner.

On Petition for Writ of Mandamus. (3:08-cv-03235-GRA)

Submitted: June 18, 2009

Decided: June 23, 2009

Before NIEMEYER, GREGORY, and DUNCAN, Circuit Judges.

Petition denied by unpublished per curiam opinion.

Theodore Thomas Wagner, Petitioner Pro Se.

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

Theodore Thomas Wagner petitions for a writ of mandamus seeking an order requiring the district court to determine the constitutionality of the Antiterrorism and Effective Death Penalty Act of 1996, Pub. L. No. 104-132, 110 Stat. 1241, prior to enforcing it. We conclude that Wagner 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).

The relief sought by Wagner 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 deny Wagner's conspiracy motion. 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