

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 09-2170

In Re: HENRY EARL MILLER,

Petitioner.

On Petition for Writ of Mandamus.
(6:04-cr-00022-HFF-3)

Submitted: March 16, 2010

Decided: March 17, 2010

Before NIEMEYER, MOTZ, and DAVIS, Circuit Judges.

Petition denied by unpublished per curiam opinion.

Henry Earl Miller, Petitioner Pro Se.

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

Henry Earl Miller petitions for a writ of mandamus, seeking an order directing the district court to accept an untimely appeal. He contends that his attorney failed to note a timely appeal despite his request that an appeal be filed. Mandamus is a drastic remedy to be used only in extraordinary circumstances, when "the petitioner has no other adequate means to obtain relief to which there is a clear and indisputable right." In re Blackwater Sec. Consulting, L.L.C., 460 F.3d 576, 592 (4th Cir. 2006) (internal quotations and citation omitted). "Courts are extremely reluctant to grant a writ of mandamus." In re Beard, 811 F.2d 818, 826 (4th Cir. 1987).

The relief sought by Miller is not available by way of mandamus. Accordingly, we deny the petition for writ of mandamus and we deny Miller's motions for an evidentiary hearing and for leave to proceed on direct appeal or by 28 U.S.C.A. § 2255 (West Supp. 2009) 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