

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 10-1212

In Re: WILLIE J. ASBURY,

Petitioner.

On Petition for Writ of Mandamus.
(3:09-cv-02257-DCN-JRM)

Submitted: June 1, 2010

Decided: June 10, 2010

Before GREGORY, SHEDD, and KEENAN Circuit Judges.

Petition denied by unpublished per curiam opinion.

Willie J. Asbury, Petitioner Pro Se.

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

Willie J. Asbury petitions for a writ of mandamus, seeking an order for removal of a magistrate judge who issued a report and recommendation in Asbury v. Driskell, No. 3:08-cv-02671-DCN (D.S.C. filed July 28, 2008). We conclude that Asbury is not entitled to the relief he seeks.

Mandamus relief is a drastic remedy and should be used only in extraordinary circumstances. Kerr v. United States Dist. Court, 426 U.S. 394, 402 (1976); United States v. Moussaoui, 333 F.3d 509, 516-17 (4th Cir. 2003). Further, 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).

Here, Asbury offers nothing more than bald assertions against the magistrate judge and displeasure with the outcome of Asbury v. Driskell, a separate case wholly unrelated to the case underlying the instant petition. Therefore, we conclude that the relief Asbury seeks 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