

**UNPUBLISHED**

UNITED STATES COURT OF APPEALS  
FOR THE FOURTH CIRCUIT

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**No. 10-2410**

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In Re: GARY IVAN TERRY,  
  
Petitioner.

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On Petition for Writ of Mandamus.  
(1:03-cr-00299-NCT-1)

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Submitted: February 28, 2011 Decided: March 4, 2011

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Before TRAXLER, Chief Judge, and KING and DIAZ, Circuit Judges.

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Petition denied by unpublished per curiam opinion.

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Gary Ivan Terry, Petitioner Pro Se.

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Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

Gary Ivan Terry petitions for a writ of mandamus seeking an order from this court directing the district court judge to: (1) vacate its orders denying Terry's motions for recusal; (2) vacate the order denying Terry's 28 U.S.C.A. § 2255 (West Supp. 2010) motion; and (3) grant Terry's motion for an evidentiary hearing. He has also filed an emergency motion seeking to have this court vacate the district court's order denying Terry's motion for recusal and vacate his conviction and sentence imposed in Missouri. We conclude that Terry is not entitled to 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 well-established that 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 Terry is not available by way of mandamus. Accordingly, although we grant leave to proceed in forma pauperis, we deny Terry's motion for emergency relief and we deny Terry's petition for a 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