

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 10-6860

STEVEN LOUIS BARNES,

Petitioner - Appellant,

v.

MARGARET B. SEYMOUR, U.S. District Judge; THOMAS E. ROGERS,
Magistrate Judge; PAIGE J. GOSSETT, Judge,

Respondents - Appellees.

Appeal from the United States District Court for the District of
South Carolina, at Anderson. Sol Blatt, Jr., Senior District
Judge. (8:09-cv-02616-SB)

Submitted: February 22, 2011

Decided: March 11, 2011

Before KING, GREGORY, and DUNCAN, Circuit Judges.

Affirmed in part, vacated in part, and remanded by unpublished
per curiam opinion.

Steven Louis Barnes, Appellant Pro Se.

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

Steven Louis Barnes appeals the district court's order adopting the recommendation of the magistrate judge and dismissing his petition for a writ of mandamus without prejudice and designating the dismissal as a "strike" for purposes of the Prison Litigation Reform Act ("PLRA"), 28 U.S.C. § 1915(b) (2006). 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). We have reviewed the record and conclude that Barnes was not entitled to mandamus relief. See In re Lockheed Martin Corp., 503 F.3d 351, 353 (4th Cir. 2007) (mandamus may not be used as a substitute for appeal).

However, as the district court dismissed the action without prejudice, it cannot serve as a predicate "strike" for purposes of the PLRA. See McLean v. United States, 566 F.3d 391, 396-97 (4th Cir. 2009). Accordingly, we affirm the district court's dismissal of the action, but vacate and remand with instructions that the court amend the order to reflect that the dismissal is not a "strike" under the PLRA. 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.

AFFIRMED IN PART,
VACATED IN PART,
AND REMANDED