

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 11-2409

In Re: THEODORE THOMAS WAGNER,

Petitioner.

On Petition for Writ of Mandamus.
(2:02-cr-00181; 2:11-cv-02218-PMD)

Submitted: March 19, 2012

Decided: April 11, 2012

Before NIEMEYER and SHEDD, Circuit Judges, and HAMILTON, Senior
Circuit Judge.

Petition denied by unpublished per curiam opinion.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Unpublished opinions are not binding precedent in this circuit.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 filed a petition for writ of mandamus and a supplemental mandamus petition challenging the district court's order construing as a 28 U.S.C. § 2255 (West Supp. 2006) motion a pleading transferred from the Northern District of Texas and dismissing it without prejudice as successive. We conclude that Wagner is not entitled to mandamus relief.

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). Mandamus may not be used as a substitute for appeal. In re Lockheed Martin Corp., 503 F.3d 351, 353 (4th Cir. 2007).

The relief sought by Wagner is not available by way of mandamus. Accordingly, we grant Wagner's motion to proceed pro se and deny the petitions 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