

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 12-1995

In re: LAWRENCE MCARTHUR WEBB, a/k/a Ted Paige,
Petitioner.

On Petition for Writ of Mandamus.
(7:06-cr-00079-GEC-RSB-2)

Submitted: December 20, 2012 Decided: December 26, 2012

Before KING and DUNCAN, Circuit Judges, and HAMILTON, Senior
Circuit Judge.

Petition denied by unpublished per curiam opinion.

Lawrence McArthur Webb, Petitioner Pro Se.

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

Lawrence McArthur Webb has filed in this court a petition for a writ of audita querela and mandamus, pursuant to the All Writs Act, 28 U.S.C. § 1651(a) (2006), seeking to challenge the statutory enhancement to his sentence for conspiracy to distribute cocaine and cocaine base and related offenses. A writ of audita querela or mandamus is not available to a petitioner when other avenues of relief are available, such as a motion under 28 U.S.C.A. § 2255 (West Supp. 2012). United States v. Torres, 282 F.3d 1241, 1245 (10th Cir. 2002); United States v. Johnson, 962 F.2d 579, 582 (7th Cir. 1992) (explaining that "writ [of audita querela] could not be invoked by a defendant challenging the legality of his sentence who could otherwise raise that challenge under . . . § 2255"); see In re First Fed. Sav. & Loan Ass'n, 860 F.2d 135, 138 (4th Cir. 1988) (setting forth circumstances under which mandamus can be invoked). The fact that Webb cannot proceed under § 2255 unless he obtains authorization from this court to file a successive motion does not alter this conclusion. United States v. Valdez-Pacheco, 237 F.3d 1077, 1080 (9th Cir. 2001) ("We agree with our sister circuits . . . that a federal prisoner may not challenge a conviction or sentence by way of a petition for a writ of audita querela when that challenge is cognizable under § 2255").

Accordingly, although we grant Webb's motion to proceed in forma pauperis, we deny his petition for a writ of audita querela and mandamus. We dispense with oral argument because the facts and legal contentions are adequately presented in the materials before this court and argument would not aid the decisional process.

PETITION DENIED