

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 12-2261

In Re: SEAN DARNELL FOWLKES,

Petitioner.

On Petition for Writ of Mandamus.
(1:09-cr-00244-CCB-5)

Submitted: January 22, 2013

Decided: January 30, 2013

Before GREGORY, DUNCAN, and KEENAN, Circuit Judges.

Petition denied by unpublished per curiam opinion.

Sean Darnell Fowlkes, Petitioner Pro Se.

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

Sean Fowlkes petitions for a writ of mandamus, seeking an order directing the district court to modify its order dismissing a criminal case without prejudice to reflect a dismissal with prejudice. We deny the petition.

Mandamus is a drastic remedy to 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). Mandamus is available only when the petitioner has a clear right to the relief sought, id. at 517, and 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 Fowlkes is not available by way of mandamus. Accordingly, while 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