

**UNPUBLISHED**

UNITED STATES COURT OF APPEALS  
FOR THE FOURTH CIRCUIT

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**No. 14-1400**

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In re: TIMOTHY RAY ELEY,  
  
Petitioner.

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On Petition for Writ of Mandamus. (1:13-cv-00399-LMB-TRJ)

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Submitted: July 11, 2014

Decided: August 4, 2014

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Before MOTZ, KING, and DUNCAN, Circuit Judges.

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Petition denied by unpublished per curiam opinion.

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Timothy Ray Eley, Petitioner Pro Se.

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Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

Timothy Ray Eley petitions for a writ of mandamus seeking an order to compel his former counsel, an assistant public defender for the City of Portsmouth, to file an affidavit on Eley's behalf. We conclude that Eley is not entitled to mandamus relief.

Mandamus relief is a drastic remedy and should be used only in extraordinary circumstances. Kerr v. U.S. 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).

To the extent that Eley seeks to compel his counsel to act in his official capacity, we do not have jurisdiction to grant mandamus relief against state officials. Gurley v. Superior Court of Mecklenburg Cnty., 411 F.2d 586, 587 (4th Cir. 1969). To the extent that Eley seeks to compel his counsel to act in any other capacity, his request is beyond the scope of mandamus relief. See In re Braxton, 258 F.3d 250, 261 (4th Cir. 2001) (providing that party seeking writ of mandamus must establish, inter alia, that requested act "is an official act or duty").

The relief sought by Eley is not available by way of mandamus. Accordingly, although 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 this court and argument would not aid the decisional process.

PETITION DENIED