

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 14-1617

In re: BENITO HERNANDEZ HERNANDEZ,

Petitioner.

On Petition for Writ of Mandamus. (1:10-cr-00023-MR-1)

Submitted: August 28, 2014 Decided: September 2, 2014

Before WILKINSON, KING, and DUNCAN, Circuit Judges.

Petition denied by unpublished per curiam opinion.

Benito Hernandez Hernandez, Petitioner Pro Se.

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

Benito H. Hernandez has filed a petition for a writ of mandamus and a supplemental petition seeking an order from this court to set aside the district court's May 23, 2014, order dismissing his 28 U.S.C. § 2255 (2102) motion. We conclude that Hernandez 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 Hernandez is not available by way of mandamus. Accordingly, we deny him leave to proceed in forma pauperis and deny his petitions 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