

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 15-1763

In re: DAVID LEE SMITH,

Petitioner.

On Petition for Writ of Mandamus.
(No. 5:15-hc-02128-D)

Submitted: October 20, 2015

Decided: October 22, 2015

Before MOTZ, KEENAN, and THACKER, Circuit Judges.

Petition denied by unpublished per curiam opinion.

David Lee Smith, Petitioner Pro Se.

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

David Smith, a North Carolina inmate, petitions for a writ of mandamus directing the district court to direct the state court to either hold an evidentiary hearing on the merits of his challenges to his criminal judgment or set aside his convictions. He also seeks an order from this court directing the district court to rule on his motions for immediate release and for a preliminary injunction. The district court recently dismissed Smith's 28 U.S.C. § 2254 (2012) petition as successive and denied the motions. We conclude that Smith 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).

Mandamus may not be used as a substitute for appeal. In re Lockheed Martin Corp., 503 F.3d 351, 353 (4th Cir. 2007). In addition, the district court has ruled on the motions Smith identified in his mandamus petition, rendering the request moot. The relief sought by Smith 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, amended petition, and supplemental petitions. 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