

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 15-1864

In re: JOSEPH D. MIDYETTE,

Petitioner.

On Petition for Writ of Mandamus.
(No. 5:15-hc-02108-D)

Submitted: October 20, 2015

Decided: October 22, 2015

Before MOTZ, KEENAN, and THACKER, Circuit Judges.

Petition denied by unpublished per curiam opinion.

Joseph D. Midyette, Petitioner Pro Se.

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

Joseph D. Midyette petitions for a writ of mandamus seeking an order compelling the district court to hold an evidentiary hearing on Midyette's 28 U.S.C. § 2254 (2012) petition, on which the district court has already denied relief. We conclude that Midyette 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).

The relief sought by Midyette 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