

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 15-2222

In re: DAVID LEE SMITH,

Petitioner.

On Petition for Writ of Mandamus.
(No. 5:15-ct-03172-FL)

Submitted: November 19, 2015

Decided: November 23, 2015

Before NIEMEYER, KING, and HARRIS, 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Petition denied by unpublished per curiam opinion.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Unpublished opinions are not binding precedent in this circuit.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 construe his previously adjudicated 28 U.S.C. § 2254 (2012) petition as a 28 U.S.C. § 2241 (2012) petition and directing the Governor of North Carolina to commute his sentence to time served. 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). 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 and all Smith's pending motions, including motions for release pending appeal and for summary disposition. 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