

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 16-1013

In re: KEITH A. DAVIS,

Petitioner.

On Petition for Writ of Mandamus.
(3:11-cr-00512-MBS-1)

Submitted: April 19, 2016

Decided: April 22, 2016

Before AGEE, DIAZ, and THACKER, Circuit Judges.

Petition denied by unpublished per curiam opinion.

Keith A. Davis, Petitioner Pro Se. John David Rowell, Assistant
United States Attorney, Columbia, South Carolina, for Appellee.

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

Keith A. Davis petitions for a writ of mandamus seeking an order directing the district court to produce a more complete appellate record concerning its denial of his 28 U.S.C. § 2255 (2012) motion and grant him leave to proceed in forma pauperis. We conclude that Davis 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).

This Court has already considered and dismissed Davis' appeal of the district court's order denying relief on his § 2255 motion. United States v. Davis, 607 F. App'x 320 (4th Cir. 2015). Consequently, Davis' claims regarding the appellate record and his fee status before the district court are moot. To the extent Davis attempts to challenge anew the district court's denial of his § 2255 motion, relief is unavailable to him because mandamus may not be used as a substitute for appeal. In re Lockheed Martin Corp., 503 F.3d 351, 353 (4th Cir. 2007). We therefore conclude that the relief Davis seeks 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 Davis' motion to vacate. 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