

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 17-1143

In Re: RICHARD MONTGOMERY,

Petitioner.

On Petition for Writ of Mandamus.
(3:16-cv-00056-GMG-MJA)

Submitted: March 30, 2017

Decided: April 4, 2017

Before TRAXLER and WYNN, Circuit Judges, and HAMILTON, Senior Circuit Judge.

Petition denied by unpublished per curiam opinion.

Richard Montgomery, Petitioner Pro Se.

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

Richard Montgomery petitions for a writ of mandamus, seeking an order requiring the district court to order the Government to show cause why Montgomery's 28 U.S.C. § 2241 (2012) petition should not be granted. We conclude that Montgomery 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).

When a prisoner petitions for a writ of habeas corpus, the district court must either grant the motion or “issue an order directing the respondent to show cause why the writ should not be granted, unless it appears from the application that the applicant . . . is not entitled thereto.” 28 U.S.C. § 2243 (2012). In this case, the magistrate judge recently issued a report and recommendation concluding that Montgomery is not entitled to habeas relief. 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