

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 17-2135

In re: WILLIE JAMES ASBURY,

Petitioner.

On Petition for Writ of Mandamus.

Submitted: January 29, 2018

Decided: February 8, 2018

Before WILKINSON, Circuit Judge, and HAMILTON and SHEDD, Senior Circuit Judges.

Petition denied by unpublished per curiam opinion.

Willie James Asbury, Petitioner Pro Se.

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

Willie James Asbury petitions this court for a writ of mandamus, seeking an order compelling the Clerk of Court to construe his pleading challenging the court's denial of his 28 U.S.C. § 2244 (2012) motion as a Fed. R. Civ. P. 60(b) motion rather than as a petition for rehearing. Asbury argues that the Clerk violated her ministerial duties by refusing to file his motion as a motion for reconsideration, contending that this denied him access to courts.

“Mandamus is a drastic remedy to be invoked only in extraordinary situations.” *United States v. Moussaoui*, 333 F.3d 509, 516-17 (4th Cir. 2003) (internal quotation marks omitted). To obtain mandamus relief, a petitioner must establish that:

(1) he has a clear and indisputable right to the relief sought; (2) the responding party has a clear duty to do the specific act requested; (3) the act requested is an official act or duty; (4) there are no other adequate means to attain the desired relief; and (5) the issuance of the writ will effect right and justice in the circumstances.

In re Braxton, 258 F.3d 250, 261 (4th Cir. 2001). Asbury's petition has not established that he has a clear right to the relief he seeks. Accordingly, although we grant leave to proceed in forma pauperis, we deny the petition. We dispense with oral argument because the facts and legal contentions are adequately presented in the materials before this court and would not aid the decisional process.

PETITION DENIED