

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 18-1071

In re: DAVID LEE SMITH,

Petitioner.

On Petition for Writ of Mandamus. (No. 5:03-ct-00688-BO)

Submitted: May 24, 2018

Decided: May 29, 2018

Before NIEMEYER, MOTZ, and FLOYD, 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Petition denied by unpublished per curiam opinion.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Unpublished opinions are not binding precedent in this circuit.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 Lee Smith petitions for a writ of mandamus seeking an order directing the district court to vacate its September 25, 2003, order dismissing his 42 U.S.C. § 1983 (2012) action as frivolous, construe the § 1983 complaint liberally, and declare that the North Carolina habitual felon statute is unconstitutional. 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). Further, this court does not have jurisdiction to grant mandamus relief against state officials, *Gurley v. Superior Court of Mecklenburg Cty.*, 411 F.2d 586, 587 (4th Cir. 1969), and does not have jurisdiction to review final state court orders, *Dist. of Columbia Court of Appeals v. Feldman*, 460 U.S. 462, 482 (1983).

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. We deny all Smith's pending motions including his motions to amend and vacate our February 21, 2018, order. 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