

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 18-1505

In re: JAMES S. FALLER, II,

Petitioner.

On Petition for Writ of Mandamus. (1:17-cv-00048-IMK)

Submitted: June 14, 2018

Decided: June 18, 2018

Before TRAXLER, DUNCAN, and WYNN, Circuit Judges.

Petition denied by unpublished per curiam opinion.

James S. Faller, II, Petitioner Pro Se.

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

James S. Faller, II, petitions for a writ of mandamus, alleging the district court has unduly delayed in acting on his 28 U.S.C. § 2241 (2012) petition. He seeks an order from this court directing the district court to immediately issue a writ of habeas corpus or to hold a hearing and release him from prison. We conclude that Faller 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). 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). Our review of the district court's docket reveals that the district court adopted the recommendation of the magistrate judge and denied Faller's § 2241 petition on May 10, 2018. Accordingly, to the extent Faller seeks mandamus relief based on undue delay by the district court, his petition is moot.

Further, mandamus may not be used as a substitute for appeal. *In re Lockheed Martin Corp.*, 503 F.3d 351, 353 (4th Cir. 2007). Relief in the form of an order from this court directing the district court to issue a writ of habeas corpus or to hold a hearing and release Faller from prison is not available by way of mandamus. Accordingly, although we grant leave to proceed in forma pauperis, we deny the petition for a 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