

June 30, 2009

UNITED STATES COURT OF APPEALS
FOR THE TENTH CIRCUIT

Elisabeth A. Shumaker
Clerk of Court

In re:

MICHAEL DOYLE,

Petitioner.

No. 09-1246
(D.C. No. 1:07-CV-01358-PAB-KMT)
(D. Colo.)

ORDER

Before **LUCERO, O'BRIEN**, and **HOLMES**, Circuit Judges.

Michael Doyle seeks a writ of mandamus granting his 28 U.S.C. § 2254 habeas application now pending before the district court. It is not appropriate to request that this court decide the merits of a habeas case pending before the district court. While we may issue a writ of mandamus directing a district court to proceed where the court has unduly delayed in deciding a pending habeas application, *see Johnson v. Rogers*, 917 F.2d 1283, 1285 (10th Cir. 1990), a review of the district court's docket indicates that the magistrate judge recently issued a report and recommendation and Mr. Doyle filed objections, so this case is proceeding toward conclusion in the district court.

The petition for a writ of mandamus is DENIED. Because Mr. Doyle has presented no non-frivolous arguments in support of the writ, his motion to proceed in forma pauperis is DENIED.

Entered for the Court,

A handwritten signature in cursive script, reading "Elisabeth A. Shumaker", followed by a horizontal flourish.

ELISABETH A. SHUMAKER, Clerk