FILED
United States Court of Appeals
Tenth Circuit

June 2, 2010

Elisabeth A. Shumaker
Clerk of Court

UNITED STATES COURT OF APPEALS

FOR THE TENTH CIRCUIT

In re: WAYNE BRUNSILIUS Petitioner.	No. 10-1210 (D.C. No. 1:10-CV-00739-BNB) (D. Colo.)

ORDER

Before **LUCERO**, **HARTZ**, and **HOLMES**, Circuit Judges.

Wayne Brunsilius has filed a petition for a writ of mandamus. Upon consideration, we deny the petition.

In district court, Mr. Brunsilius filed a pleading titled "Complaint and Petition for Removal of Case Pursuant to Title 28 U.S.C. § 1441(a),(b),(c), (e1) to Federal Jurisdiction." After reviewing the complaint, the district court determined that Mr. Brunsilius's claims were properly asserted pursuant to 28 U.S.C. § 2254 because he was challenging his state court conviction. The district court therefore ordered Mr. Brunsilius to correct several deficiencies with his complaint in order to properly file it as a § 2254 petition. Mr. Brunsilius then moved to recuse the magistrate judge that had been assigned to his case and for an extension of time to cure the deficiencies in his filing.

Less than two weeks after he filed the motion to recuse, Mr. Brunsilius filed the instant mandamus petition in this court seeking an order compelling the district court to rule on his motion to recuse the magistrate judge assigned to his case and to set a hearing on his complaint. On May 17, 2010, the district denied his recusal motion. Accordingly, his request for relief with respect to that motion is moot. As for his second request seeking an order to compel the district court to hold a hearing on his complaint, Mr. Brunsilius has failed to demonstrate that he is entitled to the extraordinary remedy of a writ of mandamus. *See In re Cooper Tire & Rubber Co.*, 568 F.3d 1180, 1186-87 (10th Cir. 2009) (describing standard for writ of mandamus and noting petitioner must show "that his right to the writ is clear and indisputable." (quotation omitted)).

The petition for a writ of mandamus and the motion to proceed in forma pauperis are DENIED.

Entered for the Court,

ELISABETH A. SHUMAKER, Clerk

UNITED STATES COURT OF APPEALS
FOR THE TENTH CIRCUIT
OFFICE OF THE CLERK

Byron White United States Courthouse
1823 Stout Street
Denver, Colorado 80257
(303) 844-3157

Elisabeth A. Shumaker
Clerk of Court

Douglas E. Cressler
Chief Deputy Clerk

June 2, 2010

Wayne Brunsilius
#65458
KCCC-Burlington
P.O. Box 2000
Burlington, CO 80807

Wayne Brunsilius
#65458
CTCF - Colorado Territorial Correctional Facility
P.O. Box 1010
Canon City, CO 81215-1010

RE: 10-1210, In re: Wayne Brunsilius
Dist/Ag docket: 1:10-CV-00739-BNB

Dear Appellant:

Enclosed please find an order issued today by the court.

Please contact this office if you have questions.

Sincerely,

Elisabeth A. Shumaker
Clerk of the Court

EAS/sls