

FILED

United States Court of Appeals
Tenth Circuit

UNITED STATES COURT OF APPEALS

FOR THE TENTH CIRCUIT

December 29, 2015

Elisabeth A. Shumaker
Clerk of Court

In re: LEROY BUHL,

Petitioner.

No. 15-1437
(D.C. No. 1:14-CV-00302-REB-CBS)
(D. Colo.)

ORDER

Before **GORSUCH** and **MATHESON**, Circuit Judges.

This matter is before the court following our receipt of petitioner's response to our order dated December 8, 2015. We have also reviewed the response submitted to the show cause order dated November 13, 2015.

Upon consideration, we conclude this matter is moot. As Mr. Buhl admits in the response received on December 28, the district court has ruled on the motions identified in the petition. Moreover, he notes he has had the eye surgery mentioned in his pleadings. While he urges the petition is not moot, that objection is based solely on his disagreement with the district court's rulings. That argument is unavailing, as mandamus may not be used as "a substitute for an appeal." *Weston v. Mann (In re Weston)*, 18 F.3d 860, 864 (10th Cir. 1994). Accordingly, the petition is dismissed.

In light of this dismissal, we need not reach the question whether the “three strikes” provision of 28 U.S.C. §1915(g) applies to this petition or whether Mr. Buhl has satisfied the imminent danger exception found in the statute.

Entered for the Court

A handwritten signature in cursive script, reading "Elisabeth A. Shumaker". The signature is written in black ink and includes a long, sweeping horizontal flourish at the end.

ELISABETH A. SHUMAKER, Clerk