

UNITED STATES COURT OF APPEALS

April 22, 2009

FOR THE TENTH CIRCUIT

Elisabeth A. Shumaker
Clerk of Court

In re:

LARRY WHITE,

Petitioner.

No. 09-3072

(D.C. No. 5:07-CV-03311-SAC)

(D. Kan.)

ORDER

Before **McCONNELL**, **TYMKOVICH**, and **GORSUCH**, Circuit Judges.

Larry White, appearing pro se, has filed a petition for a writ of mandamus. Mr. White seeks relief in the form of reversal of the district court's order denying his requests for a temporary restraining order and injunctive relief. Because the district court's order is appealable, mandamus relief is unavailable. *See Weston v. Mann (In re Weston)*, 18 F.3d 860, 864 (10th Cir. 1994) ("[M]andamus is not a substitute for an appeal."). The petition for mandamus is therefore DENIED.

Mr. White must seek review of the merits of the district court's order through the appeal process. We liberally construe the technical requirements of a notice of appeal to avoid injustice and, for pro se litigants, accept various filings as the functional equivalent of a notice of appeal. *See Smith v. Barry*, 502 U.S. 244, 248-49 (1992). Because the mandamus petition provides the requisite notice and was filed within the time period for taking an appeal from the district court's

order, we will construe the petition as a notice of appeal from District of Kansas case number 07-cv-3311-SAC. *See United States v. Gunderson*, 978 F.2d 580, 583-84 (10th Cir. 1992). Although the petition for mandamus is denied, the Clerk of the Court is hereby directed to treat the filing as a misdirected notice of appeal pursuant to Fed. R. App. P. 4(d) and proceed accordingly.

Entered for the Court,

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

ELISABETH A. SHUMAKER, Clerk