

November 5, 2010

UNITED STATES COURT OF APPEALS

Elisabeth A. Shumaker
Clerk of Court

FOR THE TENTH CIRCUIT

In re:

BRIAN DAVID MITCHELL,

Petitioner.No. 10-4197
(D.C. No. 2:08-CR-00125-DAK)
(D. Utah)

ORDER

Before **TACHA**, **TYMKOVICH**, and **HOLMES**, Circuit Judges.

Brian David Mitchell has filed a renewed petition seeking a writ of mandamus to compel the district court to transfer his case to another venue. He contends the voir dire proceedings support his original position that transfer of his case to another venue is necessary to afford him a fair trial.

As we explained in our first order denying Mr. Mitchell's petition as premature, mandamus is a "drastic remedy and is to be invoked only in extraordinary circumstances." *In re Cooper Tire & Rubber Co.*, 568 F.3d 1180, 1186 (10th Cir. 2009) (quotation omitted). Consequently, the standard for granting a writ of mandamus requires a "greater showing" than what is required to obtain reversal on direct appeal. *Id.*

Three conditions must be met before a writ of mandamus may issue. First, because a writ is not a substitute for an appeal, the party seeking issuance of the writ must have no other adequate means to

attain the relief he desires. Second, the petitioner must demonstrate that his right to the writ is clear and indisputable. Finally, the issuing court, in the exercise of its discretion, must be satisfied that the writ is appropriate under the circumstances.

Id. at 1187 (quotations and citations omitted).

After considering all of the submissions by the parties and the applicable legal authority, we conclude Mr. Mitchell has failed to establish his entitlement to the extraordinary remedy of a writ of mandamus. Accordingly, we DENY the mandamus petition, and we VACATE the temporary stay of the trial proceedings.

Entered for the Court,

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

ELISABETH A. SHUMAKER, Clerk