

FILED
United States Court of Appeals
Tenth Circuit

UNITED STATES COURT OF APPEALS

February 23, 2011

FOR THE TENTH CIRCUIT

Elisabeth A. Shumaker
Clerk of Court

In re: ROBERT E. GREEN,

Petitioner.

No. 11-3047

ORDER

Before **KELLY, LUCERO**, and **GORSUCH**, Circuit Judges.

Robert E. Green requests a writ of mandamus ordering the district court to determine, on the merits, the claims presented in the habeas application he filed on October 26, 2009. In the alternative, he requests that this court grant him habeas relief based on unlawful confinement.

But as Mr. Green acknowledges in his mandamus petition, his habeas application no longer is pending before the district court. According to the district court's docket, the district court dismissed the case on February 5, 2010, and denied Mr. Green's motion for reconsideration on July 29, 2010. Mr. Green did not appeal the district court's decisions, and his time to do so has long since expired. His failure to appeal does not entitle him to mandamus relief. To the contrary, "[t]he extraordinary relief of a writ of mandamus is not a substitute for an appeal, and it is not a vehicle to relieve persons of the consequences of their

previous decision not to pursue available procedures and remedies.” *Weston v. Mann (In re Weston)*, 18 F.3d 860, 864 (10th Cir. 1994).

The petition for writ of mandamus is DENIED. Because Mr. Green has not asserted any non-frivolous argument to support the issuance of the writ, his motion to proceed in forma pauperis before this court also is DENIED.

Entered for the Court,

A handwritten signature in cursive script, reading "Elisabeth A. Shumaker".

ELISABETH A. SHUMAKER, Clerk