

FILED

United States Court of Appeals
Tenth Circuit

UNITED STATES COURT OF APPEALS

FOR THE TENTH CIRCUIT

October 16, 2013

Elisabeth A. Shumaker
Clerk of Court

In re:

DAVID A. BANKS; DEMETRIUS K.
HARPER, a/k/a Ken Harper; GARY L.
WALKER; CLINTON A. STEWART,
a/k/a C. Alfred Stewart; DAVID A.
ZIRPOLO; KENDRICK BARNES,

Petitioners.

No. 13-1416
(D.C. No. 1:09-CR-00266-CMA-1)
(D. Colo.)

ORDER

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

Kendrick Barnes, Demetrius Harper, Clinton Stewart, Gary Walker, David Zirpolo and David Banks have filed a petition for a writ of mandamus seeking an order requiring the district court to release an unedited transcript of a bench conference from their jury trial. Petitioners filed several motions related to this transcript issue in the district court and all of them were denied.

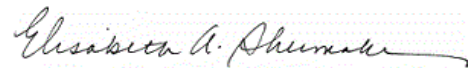
In their mandamus petition, petitioners contend that they “cannot perfect their appeal without the verbatim transcript.” Pet. at 22. But this statement does not make sense given the procedural posture of their case. Petitioners each filed an appeal in 2011. Their consolidated appeals have been fully briefed, and petitioners raised the

transcript issue in their appeals. The consolidated appeals were submitted to a panel for disposition on May 7, 2013.

It is possible that petitioners may not have presented all of the arguments in their briefs on appeal that that they now assert in their mandamus petition, but they had the opportunity to litigate those issues in their appeals. “The 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).

Petitioners have filed a frivolous mandamus petition that seeks relief that they already sought or could have sought in their appeals. The petition for a writ of mandamus is denied.

Entered for the Court

A handwritten signature in cursive script, reading "Elisabeth A. Shumaker", written in black ink on a light blue horizontal-lined background.

ELISABETH A. SHUMAKER, Clerk