

FILED

United States Court of Appeals
Tenth Circuit

UNITED STATES COURT OF APPEALS

FOR THE TENTH CIRCUIT

September 25, 2013

Elisabeth A. Shumaker
Clerk of Court

In re:

JEWEL WESLEY GIST,

Petitioner.

No. 13-5115
(D.C. No. 4:13-CV-00083-JED-TLW)
(N.D. Okla.)

ORDER

Before **HOLMES**, **MATHESON**, and **BACHARACH**, Circuit Judges.

Jewel Wesley Gist petitions this court for a writ of mandamus directing the district court to adjudicate his pending 28 U.S.C. § 2254 habeas petition. Mr. Gist filed his habeas petition on February 8, 2013. Justin Jones, the respondent in the underlying case, filed a motion to dismiss on March 21. Mr. Gist filed a reply on April 22.

In *Johnson v. Rogers*, 917 F.2d 1283, 1285 (10th Cir. 1990), we granted a writ of mandamus because the district court delayed acting on a habeas petition for fourteen months for no reason other than docket congestion. We noted that “writs of habeas corpus are intended to afford a swift and imperative remedy in all cases of illegal restraint or confinement,” *id.* at 1284 (internal quotation marks omitted), and that the question of delay should be decided on a case-by-case basis, *id.* at 1285.

Here, Mr. Gist’s petition has been at issue for just over five months. We do not consider this to be an “inordinate delay[]” in deciding a habeas petition, *id.* at

1284. Accordingly, Mr. Gist has not demonstrated his entitlement to the “drastic remedy” of a writ of mandamus. *In re Cooper Tire & Rubber Co.*, 568 F.3d 1180, 1186 (10th Cir. 2009) (internal quotation marks omitted).

We deny Mr. Gist’s petition for a writ of mandamus, and we grant his motion for leave to proceed on appeal without prepayment of costs or fees.

Entered for the Court

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

ELISABETH A. SHUMAKER, Clerk