

FILED

United States Court of Appeals
Tenth Circuit

UNITED STATES COURT OF APPEALS

FOR THE TENTH CIRCUIT

October 18, 2013

Elisabeth A. Shumaker
Clerk of Court

In re:

CHARLES E. CRABTREE,

Petitioner.

No. 13-7056
(D.C. No. 6:13-CV-00139-RAW-KEW)
(E.D. Okla.)

ORDER

Before **KELLY, HOLMES**, and **PHILLIPS**, Circuit Judges.

Charles E. Crabtree filed a 28 U.S.C. § 2241 habeas petition and named as respondents Justin Jones, the Director of the Oklahoma Department of Corrections, and Terry Jenks, the Director of the Oklahoma Pardon and Parole Board. The magistrate judge entered an order substituting Jerry Chrisman as the respondent. Mr. Chrisman is the Interim Warden of the Mack Alford Correctional Center, where Mr. Crabtree is incarcerated. Mr. Crabtree objected to this substitution and asked for the magistrate judge to recuse. In a minute order, the district court denied the recusal motion, explaining that the substitution was proper and was not adverse to petitioner. *See* Docket Entry #20.

Mr. Crabtree then filed a document in this court titled “Petitioner’s Interlocutory Appeal from District Court Judge Ronald A. White’s Order.” But an interlocutory appeal is not available from Judge White’s minute order. *See* 28 U.S.C.

§ 1292(a) (limiting interlocutory appeals to orders involving injunctions, receivers and admiralty cases). Because Mr. Crabtree’s submission asks us to assume original jurisdiction and order the district court to withdraw its order and keep the respondents he originally identified, we construe his interlocutory appeal as a petition for a writ of mandamus. *See Boughton v. Cotter Corp.*, 10 F.3d 746, 750-51 (10th Cir. 1993).

To be entitled to the extraordinary remedy of a writ of mandamus, Mr. Crabtree “must have no other adequate means to attain the relief he desires”; his right to the writ must be “clear and indisputable”; and we must be satisfied that the writ is an appropriate exercise of our discretion under the circumstances. *In re Cooper Tire & Rubber Co.*, 568 F.3d 1180, 1187 (10th Cir. 2009) (internal quotation marks omitted). Mr. Crabtree has an alternate remedy because he may appeal the district court’s substitution decision after final judgment is entered. And he has not demonstrated that “the district court has acted wholly without jurisdiction or so clearly abused its discretion as to constitute usurpation of power.” *Id.* at 1186 (internal quotation marks omitted). Accordingly, we deny his mandamus petition.

Entered for the Court

A handwritten signature in cursive script, reading "Elisabeth A. Shumaker". The signature is written in dark ink on a white background.

ELISABETH A. SHUMAKER, Clerk