

FILED

United States Court of Appeals
Tenth Circuit

UNITED STATES COURT OF APPEALS

FOR THE TENTH CIRCUIT

January 25, 2016

Elisabeth A. Shumaker
Clerk of Court

In re:

AUSTIN RAY,

Petitioner.

No. 15-1496
(D.C. No. 14-CR-00147-MSK-2)
(D. Colo.)

ORDER

Before **KELLY, EBEL**, and **MORITZ**, Circuit Judges.

Austin Ray seeks a writ of mandamus directing the United States District Court for the District of Colorado to dismiss criminal proceedings currently pending against him there. According to Mr. Ray’s pro se mandamus petition,¹ he was serving a six-year prison term in the Colorado Department of Corrections when, on April 22, 2014, federal agents arrested him “without presentation of an arrest warrant or writ of habeas corpus ad prosequendum.” Pet. at 5. Although the U.S. Attorney’s Office had “filed an indictment and issued a warrant against” Mr. Ray on April 10, 2014, he contends the district court lacks subject matter jurisdiction because the government failed to obtain a writ of habeas corpus ad prosequendum and comply with other legal requirements prior to his arrest. *Id.*

¹ Mr. Ray was granted leave to proceed pro se by the district court, albeit with standby counsel. We liberally construe Mr. Ray’s pro se materials but do not act as his advocate. See *United States v. Pinson*, 584 F.3d 972, 975 (10th Cir. 2009).

“[A] writ of 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) (internal quotation marks omitted). A writ of “mandamus is not a substitute for an appeal,” *id.* at 1186, and “[t]hree conditions must be met before a writ of mandamus may issue,” *id.* at 1187. “[T]he party seeking [the] writ must have no other adequate means for relief sought, the party’s right to the writ must be clear and undisputable, and the issuing court must be satisfied that the writ is appropriate.” *United States v. Copar Pumice Co.*, 714 F.3d 1197, 1210 (10th Cir. 2013).

Mr. Ray has failed to satisfy the standard for mandamus relief. He has not demonstrated that he has no other means of obtaining relief, particularly since he has raised his arguments in the district court and may pursue them on direct appeal. Nor has Mr. Ray shown that his right to the writ is clear and undisputable. And, he has failed to show that it would be an appropriate exercise of our discretion to issue the writ. Accordingly, Mr. Ray’s petition for a writ of mandamus is denied. His motion to proceed without prepayment of costs and fees is granted.

Entered for the Court

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

ELISABETH A. SHUMAKER, Clerk