

FILED

United States Court of Appeals
Tenth Circuit

UNITED STATES COURT OF APPEALS

FOR THE TENTH CIRCUIT

September 5, 2017

Elisabeth A. Shumaker
Clerk of Court

In re: ERIC LAMONT JOHNSON,

Petitioner.

No. 17-2110
(D.C. Nos. 1:11-CV-00037-MV-LAW &
1:03-CR-00477-MV-1)
(D. N.M.)

ORDER

Before **TYMKOVICH**, Chief Judge, **MATHESON** and **MORITZ**, Circuit Judges.

Eric Lamont Johnson, a federal prisoner appearing pro se, seeks a writ of mandamus. It is not clear whether he seeks to compel the district court to rule on two pro se post-judgment motions filed after the district court denied his 28 U.S.C. § 2255 motion or whether he seeks to compel the district court to grant him substantive sentencing relief. Johnson’s counsel for the § 2255 motion filed a notice of appeal before the pro se post-judgment motions were filed, so this Court abated the appeal pending the district court’s disposition of the post-judgment motions.

“[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). “For mandamus to issue, there must be a clear right to the relief sought, a plainly defined and peremptory duty on the part of [the district court] to do the action in question, and no other adequate remedy available.” *Johnson v. Rogers*, 917 F.2d 1283, 1285 (10th Cir. 1990).

To the extent Johnson seeks an order compelling the district court to rule on his pending post-judgment motions, he has not shown a clear right to this relief. There has been no unreasonable delay by the district court. In fact, the district court docket reflects activity by the court as recently as the end of June. *See id.* (holding fourteen-month delay due to docket congestion unreasonable). Johnson filed the motions on May 1 and May 22.

To the extent Johnson might be asking this court to direct the district court to grant substantive relief on his sentence challenge (either through his post-judgment motions or his § 2255 motion), he may pursue the adequate alternative remedy of appeal once the post-judgment motions are decided.

The petition for writ of mandamus is denied.

Entered for the Court

A handwritten signature in cursive script, reading "Elisabeth A. Shumaker", followed by a horizontal flourish.

ELISABETH A. SHUMAKER, Clerk