

FILED

United States Court of Appeals
Tenth Circuit

UNITED STATES COURT OF APPEALS

FOR THE TENTH CIRCUIT

June 26, 2020

Christopher M. Wolpert
Clerk of Court

In re: PEDRO J. “PETE” AMARO,

Petitioner.

No. 20-2052
(D.C. No. 1:16-CV-00993-KG-JHR)
(D. N.M.)

ORDER

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

Pedro J. Amaro, proceeding pro se, has filed a petition for a writ of mandamus. For the reasons that follow, we deny the petition.

In September 2016, Mr. Amaro filed in district court a complaint pursuant to 42 U.S.C. § 1983. He alleged violations of his and other prisoners’ civil rights due to carbon monoxide exposure in the prison in which he is housed and in other prisons around the country. The district court dismissed the complaint for failure to state a claim and as barred by the statute of limitations, and Mr. Amaro appealed. On appeal, this court affirmed the district court in part and reversed and remanded in part with instructions to the district court to allow Mr. Amaro the opportunity to amend his complaint. Mr. Amaro filed his amended complaint in September 2018. In April 2020, Mr. Amaro filed this petition for a writ of mandamus, asking this court to 1) order the district court to act on his amended complaint; 2) grant injunctive relief as to the prison’s

carbon-monoxide situation, which is the subject of his amended complaint; and 3) order the district court to accept his partial payments related to his prior appeal in this court.

“[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 a writ of mandamus to issue, the petitioner “must have no other adequate means to attain the relief he desires,” “must demonstrate that his right to the writ is clear and indisputable,” and must persuade the court that, “in the exercise of its discretion, . . . the writ is appropriate under the circumstances.” *Id.* at 1187 (internal quotation marks omitted). Mr. Amaro has not met these conditions.

While this mandamus petition was pending, the district court dismissed Mr. Amaro’s amended complaint without prejudice for failing to comply with the district court’s order granting leave to amend and with the Federal Rules of Civil Procedure. Consequently, Mr. Amaro’s request that this court order the district court to rule on his amended complaint is denied as moot. As for his request that this court grant substantive injunctive relief, mandamus is not appropriate because appeal of the dismissal of the amended complaint is an adequate alternative means to pursue the relief he desires. Mr. Amaro has otherwise failed to show he is entitled to the extraordinary relief of mandamus.

The petition for writ of mandamus is denied. The motion to proceed on appeal without prepayment of costs or fees is granted.

Entered for the Court

A handwritten signature in black ink, appearing to read 'C. Wolpert', with a long horizontal stroke extending to the right.

CHRISTOPHER M. WOLPERT, Clerk