

FILED

United States Court of Appeals
Tenth Circuit

UNITED STATES COURT OF APPEALS

FOR THE TENTH CIRCUIT

June 8, 2023

Christopher M. Wolpert
Clerk of Court

In re: ERIK BILAL KHAN,

Petitioner.

No. 23-2077
(D.C. Nos. 2:22-CV-00621-RB-KBM &
2:12-CR-02901-RB-KBM-1)
(D. N.M.)

ORDER

Before **McHUGH, KELLY**, and **CARSON**, Circuit Judges.

Erik Bilal Khan, proceeding pro se, seeks a writ of mandamus directing the district court to consider his motion for compassionate release. He filed his motion on August 19, 2022. The magistrate judge then ordered the government to respond to the motion and to also address whether the motion or any arguments in the motion should be construed as successive 28 U.S.C. § 2255 claims. The government filed a response on September 29, and Mr. Khan filed a reply on October 24. The district court has taken no further action on the motion since that time.

“[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). We will not issue a writ unless the petitioner shows that he has no other adequate remedy and that “his right to the writ is clear and indisputable.” *Id.* at 1187 (internal quotation marks omitted). Additionally, we

“must be satisfied [in the exercise of our discretion] that the writ is appropriate under the circumstances.” *Id.* (internal quotation marks omitted).

“[A] writ of mandamus is used only to confine an inferior court to a lawful exercise of its prescribed jurisdiction or to compel it to exercise its authority when it is its duty to do so.” *Id.* at 1186 (internal quotation marks omitted). A delay of almost eight months in ruling on a pending motion for compassionate release is not optimal. But we cannot say the delay is so egregious as to warrant the extraordinary relief of a writ of mandamus to compel the district court to exercise its authority to rule on the motion. Accordingly, we deny Mr. Khan’s mandamus petition.

We grant Mr. Khan’s “Motion for Leave to Forego Service of the Appendices” and his motion for leave to proceed without prepayment of costs or fees.

Entered for the Court

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

CHRISTOPHER M. WOLPERT, Clerk