

FILED

United States Court of Appeals
Tenth Circuit

UNITED STATES COURT OF APPEALS

FOR THE TENTH CIRCUIT

March 12, 2024

Christopher M. Wolpert
Clerk of Court

In re: FRANKLIN C. SMITH,

Petitioner.

No. 24-8004
(D.C. No. 2:23-CV-00223-ABJ)
(D. Wyo.)

ORDER

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

Franklin C. Smith, proceeding pro se, has filed a petition for a writ of mandamus directed at a state-court judge and a state prosecutor. For the following reasons, we deny the petition.

Mr. Smith has been charged with trespassing in Wyoming state court and is a pretrial detainee housed in a county jail in Wyoming. He filed a pro se 28 U.S.C. § 2241 petition, alleging he is being held illegally. The district court dismissed the petition, and Mr. Smith appealed. That appeal in case number 24-8005 remains pending.

On the same day he filed his appeal, Mr. Smith filed the underlying petition for a writ of mandamus. In his mandamus petition, he “request[s] the court to compel [the state-court judge and state prosecutor] to comply with due process of law . . . and expedite a court date.” Pet. at 5. But federal courts have no authority to issue a writ of mandamus to a state court or a state-court judge. *See Olson v. Hart*, 965 F.2d 940, 942 (10th Cir. 1992); *Van Sickle v. Holloway*, 791 F.2d 1431, 1436 n.5 (10th Cir. 1986). And

Mr. Smith cites no authority, nor are we aware of any, that would permit a federal court to issue a writ of mandamus to a state employee.

To the extent Mr. Smith's mandamus petition could be liberally construed as seeking relief related to the dismissal of his § 2241 petition, mandamus is not appropriate because he has an alternative adequate remedy through his pending appeal in case number 24-8005. *See In re Cooper Tire & Rubber Co.*, 568 F.3d 1180, 1187 (10th Cir. 2009) (explaining "a writ is not a substitute for an appeal"). Accordingly, we deny Mr. Smith's mandamus petition. We also deny his motion for leave to proceed in this matter without prepayment of costs or fees.

Entered for the Court

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

CHRISTOPHER M. WOLPERT, Clerk