

HLD-127(May 2010)

NOT PRECEDENTIAL

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 10-2439

IN RE: MATTHEW FAISON, JR.,
Petitioner

On Petition for a Writ of Mandamus from the
United States District Court for the
District of the Virgin Islands
(Related to D. V.I. Civ. No. 04-cv-00060)

Submitted Under Rule 21, Fed. R. App. P.
May 28, 2010

Before: MCKEE, CHIEF JUDGE, SCIRICA and WEIS, CIRCUIT JUDGES

(Opinion Filed: June 8, 2010)

OPINION

PER CURIAM.

Matthew Faison has filed a mandamus petition pursuant to 28 U.S.C. § 1651, wherein he apparently seeks to compel the District Court for the District of the Virgin Islands to rule on a motion to stay proceedings he filed back in October 2005.

Finding no basis for granting mandamus relief, we will deny the petition.

From a review of the District Court docket, an order dismissing the underlying complaint for lack of jurisdiction was entered by the District Court on April 28, 2004, and Faison's reconsideration motion was subsequently denied in an order entered on March 21, 2005. Despite the fact that the complaint had been dismissed and the Clerk had been directed to close the case, Faison filed two post-judgment motions seeking to stay proceedings – one on April 5, 2005 and the other on October 12, 2005. Contrary to Faison's present contention, the District Court disposed of his request to stay the proceedings in an order entered on October 14, 2005. Accordingly, his petition for writ of mandamus seeking to compel the District Court to dispose of his stay request is moot.

To the extent Faison may be seeking to challenge the District Court's disposition of his post-judgment stay motion, such review was available in the form of an appeal to this Court. A writ is not a substitute for an appeal; only if a direct appeal is unavailable will the court determine whether a writ of mandamus will issue. See In Re Ford Motor Co., 110 F.3d 954, 957 (1997). Of course, a notice of appeal from the District Court's October 14, 2005 order was due to be filed more than four and a half years ago.

For the foregoing reasons, the petition for a writ of mandamus will be denied.