

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 10-1768

In Re: RANDY L. THOMAS,

Petitioner.

On Petitions for Writ of Mandamus and Writ of Prohibition.
(3:07-cv-00231-FDW-DCK)

Submitted: September 30, 2010

Decided: October 7, 2010

Before NIEMEYER, AGEE, and KEENAN, Circuit Judges.

Petitions denied by unpublished per curiam opinion.

Randy L. Thomas, Petitioner Pro Se.

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

Randy L. Thomas petitions for a writ of mandamus and a writ of prohibition seeking an order vacating the district court's June 19, 2007, order dismissing his 42 U.S.C. § 1983 (2006) complaint as frivolous. We conclude that Thomas is not entitled to the relief he seeks.

Mandamus relief is a drastic remedy and should be used only in extraordinary circumstances. Kerr v. U.S. Dist. Court, 426 U.S. 394, 402 (1976); United States v. Moussaoui, 333 F.3d 509, 516-17 (4th Cir. 2003). Further, mandamus relief is available only when the petitioner has a clear right to the relief sought, In re First Fed. Sav. & Loan Ass'n, 860 F.2d 135, 138 (4th Cir. 1988), and may not be used as a substitute for appeal. In re Lockheed Martin Corp., 503 F.3d 351, 353 (4th Cir. 2007).

A writ of prohibition should not issue "unless it clearly appears that the inferior court is about to exceed its jurisdiction." Smith v. Whitney, 116 U.S. 168, 176 (1886). Like mandamus relief, a writ of prohibition is a drastic remedy, available only when the petitioner's right to the relief sought is "clear and undisputable." In re Vargas, 723 F.2d 1461, 1468 (10th Cir. 1983). Additionally, the writ is "not to be used as a substitute for appeal." Id.; see In re Missouri, 664 F.2d 178, 180 (8th Cir. 1981).

The relief sought by Thomas is not available by way of mandamus or prohibition. Accordingly, although we grant leave to proceed in forma pauperis, we deny the petitions for writ of mandamus and prohibition. We dispense with oral argument because the facts and legal contentions are adequately presented in the materials before the court and argument would not aid the decisional process.

PETITIONS DENIED