UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 99-7391

In Re: CURTIS J. BROWN, SR.,

Petitioner.

On Petition for Writ of Mandamus. (CA-97-2199-2-18AJF)

Submitted: December 16, 1999 Decided: December 30, 1999

Before MURNAGHAN and MOTZ, Circuit Judges, and BUTZNER, Senior Circuit Judge.

Petition denied by unpublished per curiam opinion.

Curtis J. Brown, Sr., Petitioner Pro Se.

Unpublished opinions are not binding precedent in this circuit. See Local Rule 36(c).

PER CURIAM:

Curtis J. Brown, Sr., has filed a petition for a writ of mandamus from this court seeking to have this court direct the district court to review a 28 U.S.C.A. § 2254 (West 1994 & Supp. 1999) petition filed on July 25, 1997, and dismissed by the court without prejudice for failing to exhaust state remedies. Mandamus is a drastic remedy to be used only in extraordinary circumstances. See Kerr v. United States Dist. Court, 426 U.S. 394, 402 (1976). Mandamus relief is only available when there are no other means by which the relief sought could be granted, see In re Beard, 811 F.2d 818, 826 (4th Cir. 1987), and may not be used as a substitute for appeal. See In re Catawba Indian Tribe, 973 F.2d 1133, 1135 (4th Cir. 1992). The party seeking mandamus relief carries the heavy burden of showing that he has "no other adequate means to attain the relief he desires" and that his entitlement to such relief is "clear and indisputable." Allied Chem. Corp. v. Daiflon, Inc., 449 U.S. 33, 35 (1980). Brown has not made such a showing. Accordingly, we deny Brown's motion to proceed in forma pauperis and his petition for mandamus relief. 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.

PETITION DENIED