

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

FILED
Jul 16, 2018
DEBORAH S. HUNT, Clerk

In re: VINCENT JOHNSON,
Petitioner.

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ORDER

BEFORE: BOGGS, CLAY, and KETHLEDGE, Circuit Judges.

Vincent Johnson petitions for a writ of mandamus and moves for leave to proceed *in forma pauperis*. Johnson seeks a writ of mandamus pursuant to 28 U.S.C. §§ 1651 and 1361 to compel the clerk of the court to file a motion he submitted pursuant to “Federal Rule of Civil Procedure 60(b)(6)” in his habeas corpus appeal, 16-4076.

Mandamus relief is not warranted. “[M]andamus relief is an extraordinary remedy, only infrequently utilized by this court.” *John B. v. Goetz*, 531 F.3d 448, 457 (6th Cir. 2008) (quoting *In re Perrigo Co.*, 128 F.3d 430, 435 (6th Cir. 1997)). To obtain mandamus relief, the petitioner must show, among other things, a “clear and indisputable” right to issuance of the writ. *In re U.S.*, 817 F.3d 953, 960 (6th Cir. 2016) (quoting *Cheney v. U.S. Dist. Court*, 542 U.S. 367, 381 (2004)). Johnson has not made such a showing. In his habeas corpus proceeding, the clerk of the court refused to file Johnson’s “Rule 60(b)” motion for an entirely proper reason: the case was closed. Specifically, this Court had denied a COA, and the Supreme Court had denied certiorari. Without a COA, the case could not continue. *See* 28 U.S.C. § 2253(c)(1)(A) (“Unless a circuit justice or judge issues a certificate of appealability, an appeal may not be taken to the court of appeals from the final order in a habeas corpus proceeding[.]”).

Therefore, Johnson's petition for mandamus fails and must be denied. Should Johnson have a valid claim to present, he may file a motion under 28 U.S.C. § 2244 for leave to file a second or successive habeas corpus petition under 28 U.S.C. § 2254.

The petition for writ of mandamus is **DENIED**, and the motion to proceed *in forma pauperis* is **DENIED AS MOOT**.

ENTERED BY ORDER OF THE COURT



Deborah S. Hunt, Clerk

No. 18-3492
UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

FILED
Sep 05, 2018
DEBORAH S. HUNT, Clerk

IN RE: VINCENT JOHNSON,

Petitioner.

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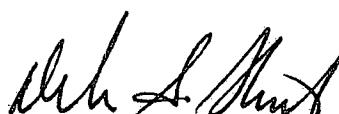
O R D E R

BEFORE: BOGGS, CLAY, and KETHLEDGE, Circuit Judges.

The court received a petition for rehearing en banc. The original panel has reviewed the petition for rehearing and concludes that the issues raised in the petition were fully considered upon the original submission and decision of the case. The petition then was circulated to the full court. No judge has requested a vote on the suggestion for rehearing en banc.

Therefore, the petition is denied.

ENTERED BY ORDER OF THE COURT



Deborah S. Hunt, Clerk

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from this filing is
available in the
Clerk's Office.**