

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

No. 18-11074-C

IN RE:
NOAH F. CORBITT,

Petitioner.

On Petitions for Writ of Mandamus from
the United States District Court for the
Southern District of Georgia

Before: WILLIAM PRYOR and JORDAN, Circuit Judges.

BY THE COURT:

Noah Corbitt, a state prisoner proceeding *pro se*, petitions us for a writ of mandamus in connection with a 42 U.S.C. § 1983 complaint he filed in the U.S. District Court for the Southern District of Georgia. In liberally construing his filings, it appears that Corbitt is attempting to use his mandamus petition, which arises out of his § 1983 action, as an improper challenge to the district court's denial of a 28 U.S.C. § 2254 petition he filed in another case. Corbitt attaches a civil consent form and a motion to proceed *in forma pauperis* to his mandamus petition.

Mandamus is available "only in drastic situations, when no other adequate means are available to remedy a clear usurpation of power or abuse of discretion." *Jackson v. Motel 6 Multipurpose, Inc.*, 130 F.3d 999, 1004 (11th Cir. 1997) (quotation omitted). Mandamus may not be used as a substitute for appeal or to control decisions of the district court in discretionary matters. *Id.* "[A] writ of mandamus may issue only to confine an inferior court to a lawful

exercise of its prescribed jurisdiction or to compel it to exercise its authority when it is its duty to do so." *In re Smith*, 926 F.2d 1027, 1030 (11th Cir. 1991) (quotation omitted).

Here, Corbitt is not entitled to mandamus relief. Corbitt is attempting to use his mandamus petition, which arises out of his § 1983 action, as an improper challenge to the district court's denial of the § 2254 petition he filed in another case. But he does not request that we take any action in connection with the underlying § 1983 case. See *In re Smith*, 926 F.2d at 1030. Therefore, Corbitt is not entitled to mandamus relief because a petition for a writ of mandamus may not be used as a substitute for an appeal. *Jackson*, 130 F.3d at 1004.

Accordingly, Corbitt's mandamus petition is hereby DENIED, and his motion to proceed *in forma pauperis* is DENIED as unnecessary.

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BY THE COURT:

Noah Corbitt, a state prisoner proceeding *pro se*, moves us for reconsideration of our earlier denial of his petition for a writ of mandamus. Corbitt's mandamus petition was submitted in conjunction with a 42 U.S.C. § 1983 complaint he filed in the U.S. District Court for the Southern District of Georgia. In his § 1983 complaint, Corbitt argued that the Honorable Lisa Godbey Wood made false statements in her order denying a 28 U.S.C. § 2254 petition he filed in his habeas proceedings. The district court dismissed Corbitt's § 1983 complaint. Corbitt appealed, but we affirmed the district court's dismissal. Corbitt then filed a petition for a writ of mandamus, in which he did not request that we direct the district court to take any action, rather, he continued to raise substantive arguments attacking district court's dismissal of his § 2254 petition. Thereafter, we denied Corbitt's mandamus petition as frivolous, concluding that he was attempting to use his mandamus petition, which arose out of his § 1983 action, as an improper

challenge to the district court's denial of the § 2254 petition he filed in another case. We also explained that Corbitt could not use his mandamus petition as a substitute to an appeal.

Subsequently, Corbitt filed the present reconsideration motion.¹ Corbitt argues that his § 1983 complaint was filed "in an effort to [correct] mistakes made by Judge Wood" in his § 2254 proceedings. Similarly, Corbitt contends that he filed his mandamus petition for the same reason, and analogizes our failure to correct Judge Wood's errors, which he asserts have deprived him of unspecified due process rights, to living in "Germany under Hitler."

A reconsideration motion is analogous to a petition for a panel rehearing, which must "state with particularity each point of law or fact that the petitioner believes the court has overlooked or misapprehended." Fed. R. App. P. 40(a)(2). In the district court context, we have held that "[a] motion for reconsideration cannot be used to relitigate old matters, raise argument or present evidence that could have been raised prior to the entry of judgment." *Wilchcombe v. TeeVee Toons, Inc.*, 555 F.3d 949, 957 (11th Cir. 2009) (quotation omitted).

Mandamus is available "only in drastic situations, when no other adequate means are available to remedy a clear usurpation of power or abuse of discretion." *Jackson v. Motel 6 Multipurpose, Inc.*, 130 F.3d 999, 1004 (11th Cir. 1997) (quotation omitted). Mandamus may not be used as a substitute for appeal or to control decisions of the district court in discretionary matters. *Id.* "[A] writ of mandamus may issue only to confine an inferior court to a lawful exercise of its prescribed jurisdiction or to compel it to exercise its authority when it is its duty to do so." *In re Smith*, 926 F.2d 1027, 1030 (11th Cir. 1991) (quotation omitted).

¹ Corbitt's filing is captioned as a "Motion to Set Aside 14 June 2018 Dismissal of my Mandamus and Remedy Default." This filing has been entered on the docket as a motion for reconsideration.

Here, Corbitt has not shown any points of law or fact that we overlooked or misapprehended when we denied his petition for a writ of mandamus. *See Fed. R. App. P. 40(a)(2)*. We correctly determined that Corbitt did not request us to direct the district court to take any action associated with his § 1983 complaint. Instead, Corbitt only sought to use his mandamus petition as an improper method of challenging the district court's denial of the § 2254 petition, which he filed in another case. *In re Smith*, 926 F.2d at 1030; *Jackson*, 130 F.3d at 1004. In fact, in his reconsideration motion, Corbitt explicitly admits that he only seeks to correct "errors" Judge Wood made in his habeas proceedings. Furthermore, even if Corbitt's mandamus petition arose out of his § 2254 action, he has not directed this Court's attention to any case stating that a petitioner may raise substantive challenges to a district court's determinations in a petition for a writ of mandamus in lieu of an appeal. Thus, we correctly determined that Corbitt was not entitled to mandamus relief. *Jackson*, 130 F.3d at 1004.

Accordingly, Corbitt's motion for reconsideration is hereby **DENIED**.

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