



United States Court of Appeals for the Fifth Circuit

Certified as a true copy and issued
as the mandate on Oct 25, 2021

Attest: *Lyle W. Cayce*
Clerk, U.S. Court of Appeals, Fifth Circuit

IN RE: KEITH SMEATON,

No. 20-30611

United States Court of Appeals
Fifth Circuit

FILED
October 25, 2021

Lyle W. Cayce
Clerk

Petitioner.

Petition for Writ of Mandamus to the
United States District Court for the
Western District of Louisiana
USDC No. 2:86-CV-3333

Before JONES, DUNCAN, and ENGELHARDT, *Circuit Judges*.

PER CURIAM:

Keith Smeaton, former federal prisoner # 75242-011, and a native and citizen of the United Kingdom, has filed in this court a pro se petition for a writ of mandamus and a motion requesting leave to file his mandamus petition in forma pauperis (IFP). The motion for leave to proceed IFP is GRANTED. Smeaton's motion for the appointment of counsel is DENIED.

This mandamus petition arises from a pro se civil rights action initiated in 1986 in which Smeaton alleged that immigration and prison officials obstructed justice and violated his due process rights resulting in his wrongful imprisonment and deportation following his convictions for wire fraud and bail jumping. In a judgment entered May 14, 1987, the district court dismissed Smeaton's complaint without prejudice on the grounds that the

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substance of Smeaton's claims had been raised in a then-pending postconviction proceeding, and Smeaton had not demonstrated that he had exhausted available administrative remedies. *See Smeaton v. Nelson*, No. 86-3333 (W.D. La. May 14, 1987) (dismissing action for the reasons stated in April 7, 1987 magistrate judge's report). On or about May 15, 1987, Smeaton filed a notice of appeal or, alternatively, a Federal Rule of Civil Procedure 60(b) motion to set aside the district court's judgment. *See Spotville v. Cain*, 149 F.3d 374, 376-78 (5th Cir. 1998) (prison mailbox rule). In August 1987, this court construed Smeaton's May 15, 1987 pleading as a timely Federal Rule of Civil Procedure 59(e) motion to alter or amend the judgment and dismissed his appeal for lack of jurisdiction. *See Smeaton v. INS*, No. 87-4401 (5th Cir. Aug. 13, 1987) (dismissing consolidated appeals). "Smeaton [was] advised to seek a ruling on his Rule 59(e) motion and, if that motion [was] denied, . . . [to] file a new notice of appeal within the time prescribed by [Federal Rule of Appellate Procedure 4(a)] in order to preserve his right to an appeal." *Id.* at 3.

More than 28 years after the district court dismissed his civil rights complaint, Smeaton filed a motion to alter or amend the district court's 1987 judgment, asserting that the district court erred in failing to address his timely Rule 59(e) motion. *See Smeaton v. Nelson*, 722 F. App'x 375 (5th Cir. 2018). This court affirmed the denial of Rule 59(e) relief as untimely and further observed that "to the extent the motion should have been treated as a motion for a ruling on the Rule 59(e) motion filed on May 15, 1987, Smeaton cannot show that the district court's denial of the motion was an abuse of discretion." *Id.* at 376.

In 2020, Smeaton filed a motion in the district court seeking a ruling on his Rule 59(e) motion filed in 1987. *See Smeaton v. Nelson*, No. 2:86-CV-03333, 2020 WL 1955293 (W.D. La. Apr. 21, 2020) (memorandum order). The district court granted the motion to the extent it sought a ruling but

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denied Rule 59(e) relief. *Id.* at **2-3. In August and October 2020, this court dismissed Smeaton's appeals for lack of jurisdiction, reasoning that the notices of appeal were untimely filed, *see Smeaton v. Nelson*, No. 20-30387 (5th Cir. Aug. 10, 2020) (unpublished order); *Smeaton v. Nelson*, No. 20-30387 (5th Cir. Oct. 1, 2020) (unpublished order), and also denied Smeaton's motion for reconsideration as to the first-issued order, *Smeaton v. Nelson*, No. 20-30387 (5th Cir. Sept. 8, 2020) (unpublished order). Thereafter, this court dismissed two of Smeaton's appeals challenging district court orders in the same underlying matter for want of prosecution based on his failure to timely file briefs. *Smeaton v. Nelson*, No. 20-30559 (5th Cir. Dec. 15, 2020) (clerk order); *Smeaton v. Nelson*, No. 20-30560 (5th Cir. Dec. 15, 2020) (clerk order). Smeaton's appeal from the denial of a motion for reconsideration he filed in January 2021 remains pending in this court in appeal no. 21-30140.

In Smeaton's mandamus petition, in addition to arguing the merits of his claims of civil rights violations during his criminal prosecution and immigration proceedings, he seeks to set aside the district court's April 2020 denial of Rule 59(e) relief as well as this court's August 2020 judgment dismissing his appeals from that order. Smeaton asks this court to direct the district court to issue a new order setting forth all reasons for denying his civil rights claims including his claim of torture through false imprisonment; his motions for appointment of counsel on grounds of "mental disability dyslexia"; his motion requesting oral argument; and his Rule 59(e) motion.

"Mandamus is an extraordinary remedy that should be granted only in the clearest and most compelling cases." *In re Willy*, 831 F.2d 545, 549 (5th Cir. 1987). A party seeking mandamus relief must show both that he has no other adequate means to obtain the requested relief and that he has a "clear and indisputable" right to the writ. *Id.* (internal quotation marks and citation omitted). Mandamus is not a substitute for appeal. *Id.* "Where an interest can be vindicated through direct appeal after a final judgment, this

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court will ordinarily not grant a writ of mandamus.” *Campanioni v. Barr*, 962 F.2d 461, 464 (5th Cir. 1992). “[T]he party seeking issuance of the writ [must] have no other adequate means to attain the relief he desires—a condition designed to ensure that the writ will not be used as a substitute for the regular appeals process.” *Cheney v. U.S. Dist. Court for D.C.*, 542 U.S. 367, 380-81 (2004) (second alteration in original) (internal quotation marks and citation omitted). Smeaton’s requests that we direct the district court to issue a new order and that we set aside the district court’s April 2020 order as well as this court’s August 2020 order are not within the scope of available mandamus relief. *See id.*

The petition for a writ of mandamus is DENIED.

United States Court of Appeals
FIFTH CIRCUIT
OFFICE OF THE CLERK

LYLE W. CAYCE
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October 25, 2021

Mr. Tony R. Moore
Western District of Louisiana, Lake Charles
United States District Court
300 Fannin Street
Suite 1167
Shreveport, LA 71101-0000

No. 20-30611 In re: Keith Smeaton
USDC No. 2:86-CV-3333

Dear Mr. Moore,

Enclosed is a copy of the judgment issued as the mandate.

Sincerely,

LYLE W. CAYCE, Clerk



By:
Monica R. Washington, Deputy Clerk
504-310-7705

cc w/encl:
Mr. Keith Smeaton

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF LOUISIANA
LAKE CHARLES DIVISION

KEITH SMEATON

CASE NO. 2:86-CV-03333 SEC P

VERSUS

JUDGE JAMES D. CAIN, JR.

ALAN NELSON ET AL.

MAGISTRATE JUDGE KAY

ORDER

Upon consideration of the plaintiff's Motion to Reconsider [doc. 48], the court finds that the motion should be **DENIED**. The order referenced by plaintiff was not issued by this court but instead is a copy of the judgment and mandate of the Fifth Circuit, filed in the record of the district court proceedings as a matter of course.

THUS DONE AND SIGNED in Chambers, on this 22nd day of January, 2021.



JAMES D. CAIN, JR.
UNITED STATES DISTRICT JUDGE

Reply 12-17-2021

(Received 12-17-2021)

United States Court of Appeals for the Fifth Circuit

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NO SCPL

No. 20-30611

IN RE: KEITH SMEATON,

Petitioner.

Petition for a Writ of Mandamus
to the United States District Court
for the Western District of Louisiana
USDC No. 2:86-CV-3333

Before JONES, DUNCAN, and ENGELHARDT, *Circuit Judges.*
PER CURIAM:

This panel previously DENIED petitioner's petition for writ of mandamus, and motion for appointment of counsel and granted the motion to proceed in forma pauperis. The panel has considered Petitioner's motion for reconsideration.

IT IS ORDERED that the motion is DENIED.

IT IS FURTHER ORDERED that petitioner's motion to add medical evidence not available is DENIED.

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1. *Chlorophytum comosum* (L.) Ker-Gawler var. *variegatum* (L.) Ker-Gawler