



United States Court of Appeals for the Fifth Circuit

A True Copy

Certified order issued Jan 06, 2022

No. 21-50430

Lyfe W. Cayce
Clerk, U.S. Court of Appeals, Fifth Circuit

IN RE: ROSA SERRANO,

Petitioner.

Petition for Writ of Mandamus to the
United States District Court for the
Western District of Texas
USDC No. 6:19-CV-414

Before ELROD, OLDHAM and WILSON, *Circuit Judges*.

PER CURIAM:

Rosa Serrano, Texas prisoner # 2151723, has filed in this court a pro se petition for a writ of mandamus and a motion requesting leave to file her mandamus petition in forma pauperis (IFP). The motion for leave to proceed IFP is GRANTED. Serrano has also filed two motions for leave to amend her mandamus petition. Those motions are GRANTED. Her motion to stay the district court proceedings and reinstate her habeas action pending resolution of this petition and her motion to amend the motion to stay are DENIED.

In her mandamus petition and amended petitions, Serrano seeks relief from the district court's resolution of a habeas petition, stamped as filed on July 8, 2019, in which she challenged her conviction for Medicaid fraud as well as a number of prison disciplinary convictions. The district court

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entered a final judgment denying the habeas application on July 2, 2021, after which Serrano filed a motion for new trial or to alter or amend judgment, which the court denied by order entered on August 17, 2021. Serrano then applied for a certificate of appealability, which our court docketed as No. 21-50889. Her COA application remains pending.

She also asks us to order that a state criminal proceeding that she attempted to remove to federal court in 2017 be transferred to the underlying habeas matter. Her arguments revolve primarily around her contention that she successfully removed her state criminal prosecution to federal court in 2017, depriving the state court of jurisdiction over that matter. She asserts that the removed case was part of a prior habeas action she identifies as No. 3:17-cv-221 in which she sought to challenge state court contempt rulings. The district court denied habeas relief in a judgment entered on November 9, 2017, and also concluded that the attempted removal did not meet the statutory requirements. *Serrano v. Wiles*, No. 3:17-CV-0221 (W.D. Tex. Nov. 9, 2017). A judge of this court denied a COA. *Serrano v. Wiles*, No. 17-51086 (5th Cir. Oct. 31, 2018).

Serrano also alludes to two other appeals she has brought in this court. In *Serrano v. Comstok-King*, 839 F. App'x 894, 895 (5th Cir. 2021) (per curiam), we affirmed the district court's severance of Serrano's habeas claims from her civil rights action. And in *Serrano v. Crawford-McClure*, 839 F. App'x 931, 931-32 (5th Cir. 2021) (per curiam), we affirmed the dismissal of Serrano's civil rights complaint that challenged her underlying conviction and two state criminal contempt orders and asserted, as in the prior habeas action, that the state courts lacked jurisdiction over her criminal cases because she removed them to federal court.

"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

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(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 court will ordinarily not grant a writ of mandamus.” *Campanioni v. Barr*, 962 F.2d 461, 464 (5th Cir. 1992).

Serrano has an available means to challenge the denial of her habeas petition and postjudgment motion and, indeed, applied for a COA. Further, she previously sought habeas and appellate relief arising out of the 2017 petition, which also challenged the purportedly removed criminal contempt proceedings, and unsuccessfully sought relief on these matters in a civil rights case. Thus, the extraordinary remedy of mandamus is not appropriate. The petition for a writ of mandamus is DENIED.

We note that this is the second time that Serrano has attempted to use mandamus to challenge an adverse judgment despite also pursuing an appeal. *See In re Serrano*, No. 20-50518 (5th Cir. Oct. 28, 2020). Further, as discussed above, the instant petition seeks to challenge a closed proceeding that was already the subject of an unsuccessful effort to appeal, and Serrano has brought repeated challenges to her state convictions on the basis that her removal of those matters to federal court deprived the state courts of jurisdiction. We CAUTION Serrano that repeated abusive or frivolous filings may result in the imposition of sanctions, including monetary sanctions and limitations on her ability to file pleadings in this court and courts subject to this court’s jurisdiction.

United States Court of Appeals

FIFTH CIRCUIT
OFFICE OF THE CLERK

LYLE W. CAYCE
CLERK

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January 06, 2022

Ms. Jeannette Clack
Western District of Texas, Waco
United States District Court
800 Franklin Avenue
Waco, TX 76701

No. 21-50430 In re: Serrano
USDC No. 6:19-CV-414

Dear Ms. Clack,

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:
Ms. Rosa Serrano

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