

21-1785

Appendix "g"

LeAnthony T. Winston

#20492-509

UNITED STATES PENITENTIARY

P. O. Box 019001

Atwater, CA 95301-0000

UNPUBLISHED

**UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT**

No. 21-1785

In re: LEANTHONY WINSTON, a/k/a Locks, a/k/a Lee Lee,

Petitioner.

On Petition for Writ of Mandamus
(No. 2:20-cr-00108-RGD-DEM-1)

Submitted: October 19, 2021

Decided: November 2, 2021

Before AGEE, WYNN, and RICHARDSON, Circuit Judges.

Petition denied by unpublished per curiam opinion.

LeAnthony Winston, Petitioner Pro Se.

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

LeAnthony Winston petitions for a writ of mandamus seeking an order directing the district court to dismiss the indictments in his criminal case. We conclude that Winston is not entitled to mandamus relief.

Mandamus relief is a drastic remedy and should be used only in extraordinary circumstances. *Cheney v. U.S. Dist. Ct.*, 542 U.S. 367, 380 (2004); *In re Murphy-Brown, LLC*, 907 F.3d 788, 795 (4th Cir. 2018). Further, mandamus relief is available only when the petitioner has a clear right to the relief sought and “has no other adequate means to attain the relief [he] desires.” *Murphy-Brown*, 907 F.3d at 795 (alteration and internal quotation marks omitted). Mandamus may not be used as a substitute for appeal. *In re Lockheed Martin Corp.*, 503 F.3d 351, 353 (4th Cir. 2007). The relief sought by Winston is not available by way of mandamus. Accordingly, we deny the petition.

We deny Winston’s motions for release from pretrial detention, a temporary restraining order, and a stay pending appeal. We dispense with oral argument because the facts and legal contentions are adequately presented in the materials before this court and argument would not aid the decisional process.

PETITION DENIED

FILED: November 2, 2021

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 21-1785
(2:20-cr-00108-RGD-DEM-1)

In re: LEANTHONY WINSTON, a/k/a Locks, a/k/a Lee Lee

Petitioner

J U D G M E N T

In accordance with the decision of this court, the petition for writ of
mandamus is denied.

/s/ PATRICIA S. CONNOR, CLERK

Date

AO 245B (Rev. 09/19) (VAE 11/21) Judgment in a Criminal Case
Sheet 2 - Imprisonment

Case Number: 2:20cr00108-001
Defendant's Name: WINSTON, LEANTHONY

IMPRISONMENT

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a term of **FOUR HUNDRED SIXTY (460) MONTHS**. The term consists of **FOUR HUNDRED SIXTY (460) MONTHS** on each of Counts 1, 2, and 3; a term of **ONE HUNDRED TWENTY (120) MONTHS** on Count 4; a term of **THREE HUNDRED SIXTY (360) MONTHS** on each of Counts 6, 7, and 8; and a term of **ONE HUNDRED EIGHTY (180) MONTHS** on Count 5, all to be served concurrently.

The Court makes the following recommendations to the Bureau of Prisons:

1. The defendant shall be enrolled in a substance abuse treatment and a mental health treatment program.

☒ The defendant is remanded to the custody of the United States Marshal.

RETURN

I have executed this judgment as follows: _____

Defendant delivered on _____ to _____
at _____, with a certified copy of this Judgment.

UNITED STATES MARSHAL

By

DEPUTY UNITED STATES MARSHAL

Case Number: 2:20cr00108-001
Defendant's Name: WINSTON, LEANTHONY

SUPERVISED RELEASE

Upon release from imprisonment, the defendant will be on supervised release for a term of **SIX (6) YEARS**. This term consists of **FIVE (5) YEARS** on each of Counts 1, 2, 3, and 5; a term of **THREE (3) YEARS** on Count 4; and a term of **SIX (6) YEARS** on Counts 6, 7, and 8, all of which are to run concurrently.

MANDATORY CONDITIONS

1. You must not commit another federal, state or local crime.
2. You must not unlawfully possess a controlled substance.
3. You must refrain from any unlawful use of a controlled substance. You must submit to one drug test within 15 days of commencement on supervised release and at least two periodic drug tests thereafter, as may be directed by the probation officer.
☐ The above drug testing condition is suspended, based on the court's determination that you pose a low risk of future substance abuse. *(check if applicable)*
4. ☒ You must make restitution in accordance with 18 U.S.C. §§ 3663 and 3663A or any other statute authorizing a sentence of restitution. *(check if applicable)*
5. ☐ You must cooperate in the collection of DNA as directed by the probation officer. *(check if applicable)*
6. ☒ You must comply with the requirements of the Sex Offender Registration and Notification Act (34 U.S.C. § 20901, et seq.) as directed by the probation officer, the Bureau of Prisons, or any state sex offender registration agency in the location where you reside, work, are a student, or were convicted of a qualifying offense. *(check if applicable)*
7. ☐ You must participate in an approved program for domestic violence. *(check if applicable)*

You must comply with the standard conditions that have been adopted by this court as well as with any other conditions on the attached page.

Case Number: 2:20cr00108-001
Defendant's Name: WINSTON, LEANTHONY

STANDARD CONDITIONS OF SUPERVISION

As part of your supervised release, you must comply with the following standard conditions of supervision. These conditions are imposed because they establish the basic expectations for your behavior while on supervision and identify the minimum tools needed by probation officers to keep informed, report to the court about, and bring about improvements in your conduct and condition.

1. You must report to the probation office in the federal judicial district where you are authorized to reside within 72 hours of your release from imprisonment, unless the probation officer instructs you to report to a different probation office or within a different time frame.
2. After initially reporting to the probation office, you will receive instructions from the court or the probation officer about how and when you must report to the probation officer, and you must report to the probation officer as instructed.
3. You must not knowingly leave the federal judicial district where you are authorized to reside without first getting permission from the court or the probation officer.
4. You must answer truthfully the questions asked by your probation officer.
5. You must live at a place approved by the probation officer. If you plan to change where you live or anything about your living arrangements (such as the people you live with), you must notify the probation officer at least 10 days before the change. If notifying the probation officer in advance is not possible due to unanticipated circumstances, you must notify the probation officer within 72 hours of becoming aware of a change or expected change.
6. You must allow the probation officer to visit you at any time at your home or elsewhere, and you must permit the probation officer to take any items prohibited by the conditions of your supervision that he or she observes in plain view.
7. You must work full time (at least 30 hours per week) at a lawful type of employment, unless the probation officer excuses you from doing so. If you do not have full-time employment you must try to find full-time employment, unless the probation officer excuses you from doing so. If you plan to change where you work or anything about your work (such as your position or your job responsibilities), you must notify the probation officer at least 10 days before the change. If notifying the probation officer at least 10 days in advance is not possible due to unanticipated circumstances, you must notify the probation officer within 72 hours of becoming aware of a change or expected change.
8. You must not communicate or interact with someone you know is engaged in criminal activity. If you know someone has been convicted of a felony, you must not knowingly communicate or interact with that person without first getting the permission of the probation officer.
9. If you are arrested or questioned by a law enforcement officer, you must notify the probation officer within 72 hours.
10. You must not own, possess, or have access to a firearm, ammunition, destructive device, or dangerous weapon (i.e., anything that was designed, or was modified for, the specific purpose of causing bodily injury or death to another person such as nunchakus or tasers).
11. You must not act or make any agreement with a law enforcement agency to act as a confidential human source or informant without first getting the permission of the court.
12. If the probation officer determines that you pose a risk to another person (including an organization), the probation officer may require you to notify the person about the risk and you must comply with that instruction. The probation officer may contact the person and confirm that you have notified the person about the risk.
13. You must follow the instructions of the probation officer related to the conditions of supervision.

U.S. Probation Office Use Only

A U.S. probation officer has instructed me on the conditions specified by the court and has provided me with a written copy of this judgment containing these conditions. For further information regarding these conditions, see *Overview of Probation and Supervised Release Conditions*, available at: www.uscourts.gov

Defendant's Signature _____ Date _____

Case Number: 2:20cr00108-001
Defendant's Name: WINSTON, LEANTHONY

SPECIAL CONDITIONS OF SUPERVISION

- 1) The defendant shall pay for the support of his children in the amount ordered by any social service agency or court of competent jurisdiction and shall register with the Department of Child Support Enforcement in any state in which the defendant resides.
- 2) The defendant shall provide the probation officer access to any requested financial information.
- 3) The defendant shall apply all monies received from income tax refunds, lottery winnings, inheritances, judgments, and any anticipated or unexpected financial gains, to the outstanding court-ordered financial obligation, or in a lesser amount to be determined by the court, upon the recommendation of the probation officer.
- 4) The defendant shall not incur new credit charges or open additional lines of credit without the approval of the probation officer.
- 5) The defendant shall provide the probation officer access to any requested financial information.
- 6) The defendant shall participate in the Treasury Offset Program as may be directed by the probation officer.
- 7) If the defendant tests positive for a controlled substance or shows signs of alcohol abuse, the defendant shall participate in a program approved by the United States Probation Office for substance abuse treatment, which program may include residential treatment and testing to determine whether the defendant has reverted to the use of drugs or alcohol, with partial cost to be paid by the defendant, all as directed by the probation officer.
- 8) The defendant shall waive all rights of confidentiality regarding substance abuse treatment in order to allow the release of information to the United States Probation Office and the Bureau of Prisons and authorize communication between the probation officer, the Bureau of Prisons and any treatment provider.
- 9) The defendant shall participate in a program approved by the United States Probation Office for mental health treatment. The cost of this program is to be paid by the defendant as directed by the probation officer.
- 10) The defendant shall waive all rights of confidentiality regarding sex offender/mental health treatment in order to allow the release of information to the United States Probation Office and the Bureau of Prisons and authorize communication between the probation officer, the Bureau of Prisons and treatment provider.
- 11) Pursuant to the Adam Walsh Child Protection and Safety Act of 2006, the defendant shall register with the state sex offender registration agency in any state where the defendant resides, works, and attends school, if the statute of such state requires him to register, according to federal and state law and as may be directed by the probation officer but only if the state in which he resides, works, or attends school or in any way is there for a lengthy time or more than a week he is to register as a state sex offender if the law of the state requires registration.
- 12) Pursuant to the Adam Walsh Child Protection and Safety Act of 2006, the defendant shall submit to a search of his person, property, house, residence, vehicle, papers, computer, other electronic communication or data storage devices or media, and effects at any time, with or without a warrant, by any law enforcement or probation officer with reasonable suspicion concerning unlawful conduct or a violation of a condition of supervision.
- 13) The defendant shall have no contact either directly or indirectly with Jane Doe 1 or Jane Doe 2 at any time while on supervised release.

Case Number: 2:20cr00108-001
Defendant's Name: WINSTON, LEANTHONY**CRIMINAL MONETARY PENALTIES**

The defendant must pay the total criminal monetary penalties under the schedule of payments on Sheet 6.

	<u>Assessment</u>	<u>Restitution</u>	<u>Fine</u>	<u>AVAA</u> <u>Assessment*</u>	<u>JVTA</u> <u>Assessment**</u>
TOTALS	\$ <u>800.00</u>	\$ <u>650.00</u>	\$	\$	\$

☐ The determination of restitution is deferred.☒ The defendant must make restitution to the following payees in the amount listed below. **SEE RESTITUTION ORDER ENTERED AND FILED BY THE COURT ON MARCH 7, 2022.**☐ Restitution amount ordered pursuant to plea agreement \$☐ The defendant must pay interest on restitution and a fine of more than \$2,500, unless the restitution or fine is paid in full before the fifteenth day after the date of the judgment, pursuant to 18 U.S.C. § 3612(f). All of the payment options on Sheet 6 may be subject to penalties for delinquency and default, pursuant to 18 U.S.C. § 3612(g).☒ The court determined that the defendant does not have the ability to pay interest and it is ordered that:☒ the interest requirement is waived for the ☐ fine ☒ restitution.☐ the interest requirement for the ☐ fine ☐ restitution is modified as follows:

* Amy, Vicky, and Andy Child Pornography Victim Assistance Act of 2018, Pub. L. No. 115-299.

** Justice for Victims of Trafficking Act of 2015, Pub. L. No. 114-22.

*** Findings for the total amount of losses are required under Chapters 109A, 110, 110A, and 113A of Title 18 for offenses committed on or after September 13, 1994, but before April 23, 1996.

Case Number: 2:20cr00108-001
 Defendant's Name: WINSTON, LEANTHONY

SCHEDULE OF PAYMENTS

Having assessed the defendant's ability to pay, payment of the total criminal monetary penalties is due as follows:

- A ☒ The special assessment and restitution is due in full immediately, balance due
☐ not later than _____, or
☒ in accordance with ☐ C, ☐ D, ☒ E, or ☒ F below; or
- B ☐ Payment to begin immediately (may be combined with ☐ C, ☐ D, or ☐ F below); or
- C ☐ Payment in equal (e.g., weekly, monthly, quarterly) installments of \$ _____ over a period of _____ (e.g., months or years), to commence (e.g., 30 or 60 days) after the date of this judgment; or
- D ☐ Payment in equal (e.g., weekly, monthly, quarterly) installments of \$ _____ over a period of _____ (e.g., months or years), to commence (e.g., 30 or 60 days) after release from imprisonment to a term of supervision; or
- E ☒ Payment during the term of supervised release will commence within 60 days after defendant's supervision begins and shall be paid in installments of not less than \$25.00 per month, until paid in full.
- F ☒ Special instructions regarding the payment of criminal monetary penalties:
 Any special assessment or restitution payments may be subject to penalties for default and delinquency. Nothing in the court's order shall prohibit the collection of any judgment or fine by the United States.

Unless the court has expressly ordered otherwise, if this judgment imposes imprisonment, payment of criminal monetary penalties is due during the period of imprisonment. All criminal monetary penalties, except those payments made through the Federal Bureau of Prisons' Inmate Financial Responsibility Program, are made to the clerk of the court.

☒ Joint and Several

Case Number		Joint and Several
Defendant and Co-Defendant Names		Amount
(including defendant number)	Total Amount	
2:20cr00108-002 – Tanya Hardesty	\$650.00	\$650.00

- ☐ The defendant shall pay the cost of prosecution.
- ☐ The defendant shall pay the following court cost(s):
- ☐ The defendant shall forfeit the defendant's interest in the following property to the United States:

Payments shall be applied in the following order: (1) assessment, (2) restitution principal, (3) restitution interest, (4) AVAA assessment, (5) fine principal, (6) fine interest, (7) community restitution, (8) JVT assessment, (9) penalties, and (10) costs, including cost of prosecution and court costs.

FILED: October 18, 2022

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 21-1785
(2:20-cr-00108-RGD-DEM-1)

In re: LEANTHONY T. WINSTON, a/k/a Locks, a/k/a Lee Lee

Petitioner

ORDER

The petition for rehearing en banc was circulated to the full court. No judge requested a poll under Fed. R. App. P. 35. The court denies the petition for rehearing en banc.

The court denies all pending motions.

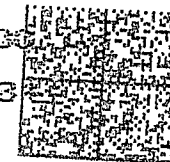
For the Court

/s/ Patricia S. Connor, Clerk

Appendix "B"

COURT OF APPEALS OF VIRGINIA
109 NORTH EIGHTH STREET
RICHMOND, VIRGINIA 23219-2305

RICHMOND VA 23219
5 MAY 2022 PM 3

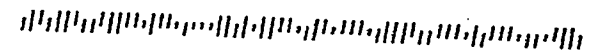


US POSTAGE PITNEY BOWES
ZIP 23219 \$ 000.53⁰
02 4W
0000373269 MAY 05 2022

Mr. LeAnthony Winston, #20492-509
USP Canaan
U.S. Penitentiary
P.O. Box 300
Waymart, PA 18472

MAY 05 2022
DZ

18472-080000



VIRGINIA:

In the Court of Appeals of Virginia on Wednesday the 20th day of April, 2022.

LeAnthony T. Winston,

Petitioner,

against

Record No. 0357-22-2

Circuit Court of the City of Norfolk,

Respondent.

Upon a Petition for a Writ of Mandamus

On February 17, 2022, LeAnthony T. Winston, petitioner, filed a petition for writ of mandamus directed to the Circuit Court of the City of Norfolk. Petitioner prays that this Court compel the circuit court “to reverse its order to nolle prosequi.” Petitioner alleges that the order of *nolle prosequi* deprived him of his rights to due process, equal protection, and to a speedy trial. Upon consideration of the verified petition, we conclude that mandamus does not lie.

“Mandamus is an extraordinary remedy that may be used ‘to compel performance of a purely ministerial duty, but it does not lie to compel the performance of a discretionary duty.’” *Moreau v. Fuller*, 276 Va. 127, 135 (2008) (quoting *In re Commonwealth’s Attorney*, 265 Va. 313, 317-18 (2003)). “The use of the remedy is limited. It is not awarded as a matter of right but only in the exercise of a sound judicial discretion. It is not awarded in a doubtful case.” *Umstattd v. Centex Homes*, 274 Va. 541, 545 (2007).

A ministerial act, our Supreme Court has explained, is “one which a person performs in a given state of facts and prescribed manner in obedience to the mandate of legal authority without regard to, or the exercise of, his own judgment upon the propriety of the act being done.” *Richlands Medical Ass’n v. Commonwealth*, 230 Va. 384, 386 (1985). In contrast, “the act of *rendering judgment* is within the inherent power of the court and . . . the very essence of adjudication and entry of judgment by a judge involves discretionary power of the court.” *Moreau*, 276 Va. at 139 (emphasis added). Whether to grant or deny an order of *nolle prosequi* involves rendering judgment; it is not a ministerial act.

Additionally, “mandamus does not lie to compel an officer to undo what he has done in the exercise of his judgment and discretion, and to do what he had already determined ought not to be done.” *In re Commonwealth of Virginia*, 278 Va. 1, 9 (2009) (quoting *Thurston v. Hudgins*, 93 Va. 780, 784 (1895)).

Petitioner expressly alleges that the trial court entered an order of *nolle prosequi* on December 3, 2020.

Mandamus does not lie to direct the circuit court to undo the order of *nolle prosequi* it entered in the exercise of its discretion more than a year ago. *Id.*

Finally, mandamus “is not available where the applicant has an adequate remedy at law.” *Umstattd*, 274 Va. at 545; *cf. In re Vauter*, 292 Va. 761, 768 (2016) (denying a writ of prohibition and noting that “it is always a sufficient reason for withholding the writ [of prohibition], that the party aggrieved has another and complete remedy at law”). Petitioner’s legal remedy was through the regular appellate procedures, not mandamus. *See id.*; *cf. Vauter*, 292 Va. at 768.

Petitioner has failed to demonstrate that he is entitled to the extraordinary relief he seeks. Accordingly, the petition for writ of mandamus is denied.

On March 28, 2022, petitioner also moved this Court to enter a “default judgment” in his favor because the Commonwealth did not respond to his motion to “show cause” that he filed simultaneously with his petition for a writ of mandamus. Petitioner alleges that he is entitled to a default judgment under Code § 19.2-386.10. This Court has original jurisdiction to punish for contempt, to consider injunctions “in any case over which it would have appellate jurisdiction as provided in [Code] §§ 17.1-405 and 17.1-406” and to issue writs of mandamus, prohibition, and *habeas corpus* in cases in which it would have appellate jurisdiction. Code § 17.1-404. This Court has appellate jurisdiction over “any final conviction in a circuit court of a traffic infraction or a crime.” Code § 17.1-406(A). In civil matters, this Court has appellate jurisdiction over:

1. Any final decision of a circuit court on appeal from (i) a decision of an administrative agency, or (ii) a grievance hearing decision issued pursuant to § 2.2-3005;

2. Any final decision of the Virginia Workers' Compensation Commission;
3. Except as provided in subsection B of § 17.1-406, any final judgment, order, or decree of a circuit court in a civil matter;
4. Any interlocutory decree or order pursuant to § 8.01-267.8, 8.01-626, or 8.01-675.5; or
5. Any final judgment, order, or decree of a circuit court (i) involving an application for a concealed weapons permit pursuant to Article 6.1 (§ 18.2-307.1 *et seq.*) of Chapter 7 of Title 18.2, (ii) involving involuntary treatment of prisoners pursuant to § 53.1-40.1 or 53.1-133.04, or (iii) for declaratory or injunctive relief under § 57-2.02.

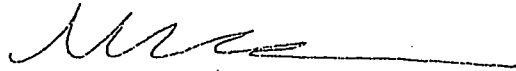
Code § 17.1-405. Finally, this Court has original jurisdiction over petitions for writs of actual innocence based on non-biological evidence. *See* Code § 19.2-327.10. There is no statutory authority for this Court to enter a default judgment. Accordingly, the motion for default judgment is denied.

A Copy,

Teste:

A. John Vollino, Clerk

By:



Deputy Clerk

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