

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

100 EAST FIFTH STREET, ROOM 540
POTTER STEWART U.S. COURTHOUSE
CINCINNATI, OHIO 45202-3988

Deborah S. Hunt
Clerk

Tel. (513) 564-7000
www.ca6.uscourts.gov

Filed: October 05, 2022

Mr. Darryl Smith
Mansfield Correctional Institution
P.O. Box 788
Mansfield, OH 44901

Re: Case No. 22-3665, In re: Darryl Smith
Originating Case No. : 1:21-cv-00934

Dear Mr. Smith,

The Court issued the enclosed Order today in this case. Judgment to follow.

Sincerely yours,

s/Roy G. Ford
Case Manager
Direct Dial No. 513-564-7016

cc: Ms. Sandy Opacich

Enclosure

No mandate to issue

No. 22-3665

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT**FILED**
Oct 5, 2022
DEBORAH S. HUNT, Clerk

In re: DARRYL SMITH,

Petitioner.

ORDER

Before: SUTTON, Chief Judge; GUY and COLE, Circuit Judges.

Darryl Smith, an Ohio prisoner, petitions for a writ of mandamus and asks that we compel the district court to vacate its order enforcing filing restrictions, provide him with a copy of the Warden's return of writ, and order the recusal of the magistrate judge. Further, he suggests that the district court has unreasonably delayed adjudicating his habeas petition. Smith also thrice moves to proceed *in forma pauperis*.

Mandamus "is a drastic and extraordinary remedy reserved for really extraordinary causes." *Cheney v. U.S. Dist. Ct. for Dist. of Columbia*, 542 U.S. 367, 380 (2004) (internal quotation marks and citation omitted). "[T]hree conditions must be satisfied before it may issue." *Id.* First, the petitioner must have no other adequate remedy to obtain the relief he seeks. *Id.* Second, the right to the writ must be "clear and indisputable." *Id.* at 381 (citation omitted). Finally, even if these prerequisites have been met, issuance of the writ must be "appropriate under the circumstances." *Id.*

Smith first challenges the enforcement of the filing restrictions imposed against him in *Smith v. Pinkney*, No. 1:18-cv-00163 (N.D. Ohio 2018). Smith, however, did not appeal that order. His failure to pursue his available remedies does not render those remedies inadequate.

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Cf. Rimmer v. Holder, 700 F.3d 246, 262 (6th Cir. 2012) (“Adequacy does not depend on a party’s ability to prevail on the merits.”). And, to the extent he challenges the filing restrictions as applied in his present case, he was granted leave to file his habeas petition and has not yet been denied leave to file a pleading in that case.

Smith also seeks the magistrate judge’s recusal. We may consider a mandamus petition following the denial of a motion to recuse. *In re Aetna Cas. & Sur. Co.*, 919 F.2d 1136, 1143 (6th Cir. 1990) (en banc). But, other than mere speculation, Smith has not pointed to any antagonism supporting his claims of bias or improper motive and, generally, prejudice may not be established by challenging the correctness of a judicial ruling, *Williams v. Anderson*, 460 F.3d 789, 815 (6th Cir. 2006).

Smith also asks that we compel the district court to send him a copy of the Warden’s return of writ. It does not appear that he has sought that relief before the district court. Thus, he has an adequate alternative remedy.

Finally, Smith asserts that the district court has unduly delayed adjudicating his habeas petition. “[D]istrict courts ordinarily enjoy broad discretion in matters of pretrial management, scheduling, and docket control.” *Kimble v. Hoso*, 439 F.3d 331, 336 (6th Cir. 2006); *see also In re Air Crash Disaster*, 86 F.3d 498, 516 (6th Cir. 1996). Nonetheless, we look “unfavorably upon lengthy, unjustified, and inexplicable delays on the part of district courts in deciding cases.” *Campbell v. PMI Food Equip. Grp., Inc.*, 509 F.3d 776, 782 (6th Cir. 2007). No undue delay has occurred here: the magistrate judge and district court have promptly addressed the parties’ pending motions; portions of the delay are attributable to Smith’s intervening motions; his petition has only been ripe for review since February 2022; and the magistrate judge has

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explained that the district court will follow its normal practice of ruling on pending habeas petitions in the order they ripen.

Accordingly, the petition for a writ of mandamus is **DENIED**. The motions to proceed *in forma pauperis* are **DENIED AS MOOT**.

ENTERED BY ORDER OF THE COURT

A handwritten signature in black ink, appearing to read 'Deborah S. Hunt', is written over a horizontal line.

Deborah S. Hunt, Clerk

No. 22-3665

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT**FILED**
Mar 24, 2023
DEBORAH S. HUNT, Clerk

In re: DARRYL SMITH,

Petitioner.

ORDER

BEFORE: SUTTON, Chief Judge; GUY and COLE, 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

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

Deborah S. Hunt
Clerk

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Filed: March 24, 2023

Mr. Darryl Smith
Mansfield Correctional Institution
P.O. Box 788
Mansfield, OH 44901

Re: Case No. 22-3665, In re: Darryl Smith
Originating Case No.: 1:21-cv-00934

Dear Mr. Smith,

The Court issued the enclosed Order today in this case.

Sincerely yours,

s/Beverly L. Harris
En Banc Coordinator
Direct Dial No. 513-564-7077

Enclosure

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