

UNITED STATES COURT OF APPEALS

FOR THE TENTH CIRCUIT

FILED
United States Court of Appeals
Tenth Circuit

January 24, 2024

Christopher M. Wolpert
Clerk of Court

In re: ORIN KRISTICH,
Petitioner.

No. 23-2122
(D.C. Nos. 1:22-CV-00569-WJ-KRS &
1:18-CR-02635-WJ-KRS-1)
(D. N.M.)

ORDER

Before BACHARACH, EID, and ROSSMAN, Circuit Judges.

Orin Kristich has filed a document titled, "Motion for Clarification." We construe the document as a petition for panel rehearing of the decision denying his petition for a writ of mandamus.

The petition for rehearing discusses the First Amendment and its application to legal mail. In his petition for a writ of mandamus, however, Mr. Kristich asked us to direct the district court to label his mail in a specific way. Under the mandamus standard, we had to decide whether Mr. Kristich had shown a clear and indisputable right to that relief. He did not show a right to that relief because he cited no authority requiring a district court to label his mail in any particular way. His petition for rehearing does not cite any such authority either.

We deny the petition for rehearing.

Entered for the Court



CHRISTOPHER M. WOLPERT, Clerk

FILED

United States Court of Appeals
Tenth Circuit

UNITED STATES COURT OF APPEALS

FOR THE TENTH CIRCUIT

December 7, 2023

Christopher M. Wolpert
Clerk of Court

In re: ORIN KRISTICH,

Petitioner.

No. 23-2122
(D.C. Nos. 1:22-CV-00569-WJ-KRS &
1:18-CR-02635-WJ-KRS-1)
(D. N.M.)

ORDER

Before BACHARACH, EID, and ROSSMAN, Circuit Judges.

Orin Kristich petitions for a writ of mandamus directed to the district court hearing his pending 28 U.S.C. § 2255 proceedings.¹ He asks us to direct the district court (1) to label in a specific way any mail it sends to him and (2) to rule on pending motions.

A writ of mandamus is a drastic remedy, available only in extraordinary circumstances. *In re Cooper Tire & Rubber Co.*, 568 F.3d 1180, 1186 (10th Cir. 2009). We will issue a writ of mandamus only if three conditions exist:

1. The petitioner has no other way to obtain relief.
2. The petitioner has shown a right to the writ that is clear and indisputable.
3. We have determined, using our discretion, that the circumstances warrant issuing the writ.

See id. at 1187. With these principles in mind, we turn to Mr. Kristich's petition.

¹ Mr. Kristich represents himself, so we construe his filings liberally. *See Hall v. Bellmon*, 935 F.2d 1106, 1110 (10th Cir. 1991).

Labeling mail. Mr. Kristich is in prison. Early in the underlying proceedings, mail from the district court to him came back undeliverable.² Mr. Kristich then asked the district court to label future envelopes as legal mail to be opened only in his presence. The district court apparently has not complied with that request. Mr. Kristich now asks us to direct the district court to label his mail as he requested. But he fails to identify authority requiring the district court to label his mail in any specific way. In short, Mr. Kristich has not shown that his right to relief on this point is clear and indisputable.

Pending motions. In April 2023, Mr. Kristich moved for appointed counsel. In May 2023, he moved for clarification of an earlier order. The motions remain pending, and Mr. Kristich asks us to direct the district court to rule on them. But we are not persuaded that there has been an impermissible delay. *Cf. Johnson v. Rogers*, 917 F.2d 1283, 1284 (10th Cir. 1990) (granting mandamus relief when a habeas petition had been “at issue for more than fourteen months without resolution”). And the district court’s docket shows consistent activity in the underlying proceedings, so we do not worry that the district court has neglected Mr. Kristich’s case.³ Under these circumstances, mandamus relief is not warranted.

² We take judicial notice of the docket in the underlying proceedings. *See United States v. Ahidley*, 486 F.3d 1184, 1192 n.5 (10th Cir. 2007).

³ In August 2023, the government responded to Mr. Kristich’s § 2255 motion. Mr. Kristich has twice moved to extend the deadline to reply. The reply is now due in January 2024.

* * *

We deny Mr. Kristich's petition for a writ of mandamus. We grant his motion to proceed without prepaying costs or fees.

Entered for the Court



CHRISTOPHER M. WOLPERT, Clerk

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