

UNITED STATES COURT OF APPEALS  
FOR THE TENTH CIRCUIT

April 8, 2008  
Elisabeth A. Shumaker  
Clerk of Court

---

In re: CHARLES JEFFREY  
MCMILLIAN,  
  
Petitioner.

No. 08-1057  
(D.C. No. 1:05-CV-00985-WDM-MJW)  
(D. Colo.)

---

ORDER

---

Before **LUCERO**, **MURPHY**, and **McCONNELL**, Circuit Judges.

---

Charles Jeffrey McMillian seeks a writ of mandamus ordering the district court to hear and decide his pending petition for a writ of habeas corpus under 28 U.S.C. § 2254.

This court remanded Mr. McMillian’s petition for further proceedings in October 2006. The state filed its answer and the case was at issue in February 2007. We recognize that this court has held in another habeas case that “a fourteen-month delay . . . for no reason other than docket congestion is impermissible.” *Johnson v. Rogers*, 917 F.2d 1283, 1285 (10th Cir. 1990). But our review of the district court’s docket sheet indicates that on March 24, 2008, the magistrate judge issued his report and recommendation regarding Mr. McMillian’s petition. Consequently, the case is proceeding toward judgment

in the district court, and the extraordinary relief of mandamus is not warranted at this time.

The petition for a writ of mandamus is DENIED.

Entered for the Court,

A handwritten signature in cursive script, reading "Elisabeth A. Shumaker", with a long horizontal flourish extending to the right.

ELISABETH A. SHUMAKER, Clerk