

UNITED STATES COURT OF APPEALS **December 2, 2008**

FOR THE TENTH CIRCUIT Elisabeth A. Shumaker
Clerk of Court

In re:

SHERMAN GALLOWAY,

Petitioner.

No. 08-3314
(D.C. No. 5:98-CV-03347-DES)
(D. Kan.)

ORDER

Before **McCONNELL**, **TYMKOVICH**, and **GORSUCH**, Circuit Judges.

Sherman Galloway has filed a petition for a writ of mandamus and a motion to proceed in forma pauperis (IFP). Mr. Galloway has also filed a motion for a temporary restraining order and/or preliminary injunction, which we construe as a motion for a stay pending this court’s consideration of his mandamus petition.

Mr. Galloway, a state prisoner proceeding pro se, seeks mandamus relief to void his convictions and vacate his sentences. He argues his incarceration violates his rights under the United States Constitution. To be entitled to mandamus relief, a petitioner “must demonstrate a clear abuse of discretion, or conduct by the district court amounting to a usurpation of judicial authority.” *Nichols v. Alley*, 71 F.3d 347, 350 (10th Cir. 1995) (per curiam). “Mandamus is available only upon a showing of a clear and indisputable right to relief.” *Id.* Mr. Galloway does not have any actions currently pending in federal district court

and this court has no authority to issue a writ of mandamus to a state court judge, *see Olson v. Hart*, 965 F.2d 940, 942 (10th Cir. 1992).

Moreover, the relief Mr. Galloway seeks is inappropriate for a mandamus petition. Mr. Galloway was convicted in 1981. This court affirmed the denial of his first 28 U.S.C. § 2254 petition in 1991. Most recently, in 2004, this court denied authorization for Mr. Galloway to file a second or successive § 2254 petition. His mandamus petition appears to be an attempt to circumvent the authorization process for filing a second or successive § 2254 petition. *See* 28 U.S.C. § 2244 (b).

The petition for a writ of mandamus and the motion to proceed IFP are DENIED. The motion for a stay is DENIED as moot.

Entered for the Court,



ELISABETH A. SHUMAKER, Clerk