

UNITED STATES COURT OF APPEALS
FOR THE TENTH CIRCUIT

April 14, 2008

Elisabeth A. Shumaker
Clerk of Court

In re:

RORY J. SCHULTZ,

Petitioner.

No. 08-4059
(D.C. No. 2:05-CV-01003-TS-DN)
(D. Utah)

ORDER

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

Rory J. Schultz, a Utah state prisoner, seeks relief in the nature of mandamus in connection with his 28 U.S.C. § 2254 action filed in United States District Court for the District of Utah. Specifically, he asks for an order requiring the federal district court to compel a Utah state court to provide written transcripts of state-court testimony.

Mandamus is a drastic remedy, to be used only in extraordinary situations. *Allied Chem. Corp. v. Daiflon, Inc.*, 449 U.S. 33, 34 (1980); *Weston v. Mann (In re Weston)*, 18 F.3d 860, 864 (10th Cir. 1994). A petitioner must show that (1) he has a clear and indisputable right to the relief sought, (2) that the respondent has a plainly defined and peremptory duty . . . to do the action in question, and (3) that

no other adequate remedy is available.” *In re McCarthy*, 368 F.3d 1266, 1268 (10th Cir. 2004) (quotations and alteration omitted).

Mr. Schultz’s petition meets none of the three requirements for mandamus relief. He has not shown a right to the transcripts, the district court’s duty to require production of the transcripts, or the lack of an alternative remedy. In fact, the district court’s order of April 10, 2008, provides Mr. Schultz with an opportunity to renew his request in that court and, if he receives an adverse final ruling, he may raise the issue on appeal to this court.

The petition for a writ of mandamus is DENIED. The motion to proceed in this court without prepayment of costs or fees is GRANTED.

Entered for the Court



ELISABETH A. SHUMAKER, Clerk