

Not published

UNITED STATES COURT OF APPEALS FOR VETERANS CLAIMS

NO. 16-2504

THOMAS MEISSGEIER,

PETITIONER,

v.

ROBERT A. McDONALD,
SECRETARY OF VETERANS AFFAIRS,

RESPONDENT.

Before LANCE, *Judge*.

ORDER

*Note: Pursuant to U.S. Vet. App. R. 30(a),
this action may not be cited as precedent.*

On July 21, 2016, the petitioner, through counsel, filed a petition for extraordinary relief in the nature of a writ of mandamus. In it, he asks the Court to order the Secretary to "eliminate delays in processing appeals" and "hold unconstitutional under the Due Process Clause of the Fifth Amendment to the Constitution any statute, regulation or practice that interferes with prompt and speedy appeals. Petition (Pet.) at 1. On July 27, 2016, the petitioner filed an opposed motion to consolidate his case with 16 other cases. The Court denied the motion to consolidate on September 14, 2016, as the petitioner provided no facts related to his case that warranted consolidation. On September 16, 2016, the petitioner filed a notice of intent to amend his petition to provide sufficient facts in light of the Court's order denying consolidation.

This Court has the authority to issue extraordinary writs in aid of its jurisdiction pursuant to the All Writs Act, 28 U.S.C. § 1651(a). *See Cox v. West*, 149 F.3d 1360, 1363-64 (Fed. Cir. 1998). However, "[t]he remedy of mandamus is a drastic one, to be invoked only in extraordinary situations." *Kerr v. U.S. Dist. Court*, 426 U.S. 394, 402 (1976). Accordingly, three conditions must be met before the Court may issue a writ: (1) The petitioner must demonstrate a lack of adequate alternative means to obtain the desired relief, thus ensuring that the writ is not used as a substitute for the appeals process; (2) the petitioner must demonstrate a clear and indisputable right to the writ; and (3) the Court must be convinced, given the circumstances, that the issuance of the writ is warranted. *See Cheney v. U.S. Dist. Court*, 542 U.S. 367, 380-81 (2004); *see also Costanza v. West*, 12 Vet.App. 133, 134 (1999) (per curiam order) (explaining that bald assertions are insufficient to justify mandamus and finding that petitioner did not demonstrate that he lacked alternative means of relief when he did not undertake to resolve delay prior to filing the petition).

In the present case, the petitioner has failed to provide sufficient facts to determine whether a writ is warranted. *See id.* However, in light of his notice of intent to amend his petition, the Court will provide 7 days for him to file the amended petition. Failure to timely file an amended petition may result in dismissal of the petition without further notice. *See* U.S. VET. APP. R. 31(b) (failure to comply with an order of this Court may result in dismissal).

Accordingly, it is

ORDERED that, within 7 days after the date of this order, the petitioner file his amended petition.

DATED: September 23, 2016

BY THE COURT:


ALAN G. LANCE, SR.
Judge

Copies to:

John A. Chandler, Esq.

VA General Counsel (027)