

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
FORT MYERS DIVISION

SEAN PHILLIP CHAMP,

Plaintiff,

v.

Case No: 2:18-cv-574-FtM-29CM

LEE COUNTY SHERIFF'S OFFICE
and UNNAMED DEFENDANTS,

Defendants.

ORDER

This matter comes before the Court on Plaintiff Sean Phillip Champ's Motion for Writ of Mandamus (Doc. #1) filed on August 22, 2018. Plaintiff moves the Court to notify Circuit Judge Joseph Fuller that he has not been transported to the Charlotte County jail as ordered. Plaintiff alleges that his life is in danger if he remains in the Lee County Jail and the Lee County Sheriff's Office must be forced to comply with Judge Fuller's transport order.

Plaintiff is not entitled to the mandamus relief that he seeks. Mandamus, which is an extreme form of equitable relief, "is a writ designed to require an official to perform an act required by law." See Corn v. City of Lauderdale Lakes, 904 F.2d 585, 587 (11th Cir. 1990). Although the writ of mandamus was abolished by Federal Rule of Civil Procedure 81(b), federal courts "may issue all writs necessary or appropriate in aid of their

respective jurisdictions and agreeable to the usages and principles of law." 28 U.S.C. § 1651 (2000); see also Armstrong v. Martin Marietta Case, 138 F.3d 1374, 1385 (11th Cir. 1998) (en banc) (recognizing the writ of mandamus may issue to correct a clear abuse of discretion or the failure to carry out a ministerial task). Pursuant to their powers under 28 U.S.C. § 1651, federal courts continue to grant equitable relief, which sometimes are referred to as "writs of mandamus." See generally Vacheron & Constantin-Le Coultre Watches, Inc. v. Benrus Watch Co., 260 F.2d 637, 640 (2d Cir. 1958) (noting courts continue to issue orders that "for brevity, we may still speak of as a mandamus.") Preferred Sites, LLC v. Troup County, 296 F.3d 1210, 1220-21 (11th Cir. 2002). "[T]he remedy of mandamus is a drastic one, to be invoked only in extraordinary situations[.]" In re Bellsouth Corp., 334 F.3d 941, 953 (11th Cir. 2003) (quoting Allied Chem. Corp. v. Daiflon, Inc., 449 U.S. 33, 34 (1981)); see also Mallard v. United States Dist. Court for the Southern Dist. of Iowa, 490 U.S. 296, 309 (1989).

To be entitled to mandamus, Petitioner must demonstrate the following: (1) a clear right to the relief he requests; (2) a clear, non-discretionary duty in the Respondent to perform the action sought; and, (3) the absence of an adequate alternative remedy. Mallard, 490 U.S. at 309; Stephens v. Dep't of Health & Human Servs., 901 F.2d 1571, 1576 (11th Cir. 1990); District Lodge

No. 166. v. TWA Servs. Inc., 731 F.2d 711, 717 (11th Cir. 1984) (quoting Carter v. Seamans, 411 F.2d 767, 773 (5th Cir. 1969)). Here, Petitioner has not met his burden. He has not shown that he is entitled to this drastic remedy. In fact, Plaintiff has an adequate alternative remedy in that he may file a civil rights case in this Court to address the alleged violations of his rights by Lee County Sheriff's Deputies.

Accordingly, it is hereby

ORDERED:

1. Pro Se Plaintiff Sean Phillip Champ's Motion for Writ of Mandamus (Doc. #1) is **DENIED**.

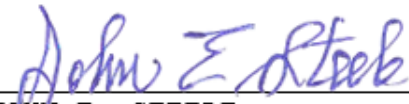
2. The Case is hereby **DISMISSED without prejudice**.

3. The Clerk of Court shall enter judgment dismissing this action without prejudice and close the case.

4. The **Clerk of Court** shall send a "Civil Rights Complaint Form," an "Affidavit of Indigency" form, and a "Prisoner Consent Form and Financial Certificate" to Petitioner. If Petitioner elects to initiate a civil rights action in this Court, he may complete and submit these forms. Petitioner should not place this case number on the forms. The Clerk will assign a separate case number. If Petitioner elects to initiate such an action, he shall either file a fully completed "Prisoner Consent Form and Financial Certificate" and "Affidavit of Indigency" (if he desires to proceed

as a pauper) or pay the \$350.00 filing fee (if he does not desire to proceed as a pauper).

DONE and ORDERED at Fort Myers, Florida, this 27th day of August, 2018.



JOHN E. STEELE
SENIOR UNITED STATES DISTRICT JUDGE

Copies:
Counsel of Record
SA: FTMP-2