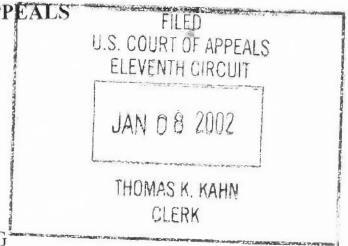


IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

No. 01-16218-H

Dist.Ct. Docket No. 01-14078-CV-DLG



IN RE:

MARCELLUS M. MASON, JR.,

Petitioner.

On Petition for Writ of Mandamus to the
United States District Court for the
Southern District of Florida

ORDER:

Marcellus M. Mason, Jr., seeks to file this mandamus petition in forma pauperis (IFP), pursuant to 28 U.S.C. § 1915(a), which provides that any court of the United States may authorize the commencement of a proceeding without prepayment of fees by a person who submits an affidavit that includes a statement of assets the person possesses and that the person is unable to pay such fees. The court, however, may dismiss the case at any time if it determines that the allegation of poverty is untrue, or the action or appeal is frivolous. See 28 U.S.C. § 1915(e)(2)(A) & (B).

In his mandamus petition, Mason alleges that the district court (1) is violating his access to the courts, (2) is violating the Federal Judicial Code of Conduct, (3) abused its discretion in denying

his IFP, and (4) is biased and should be disqualified from considering any further cases he files. Mandamus is available “only in drastic situations, when no other adequate means are available to remedy a clear usurpation of power or abuse of discretion.” Jackson v. Motel 6 Multipurpose, Inc., 130 F.3d 999, 1004 (11th Cir. 1997). Mandamus may not be used as a substitute for appeal or to control decisions of the district court in discretionary matters. Id. The petitioner has the burden of showing that the claimed right to issuance of the writ is clear and indisputable. In re Lopez-Lukis, 113 F.3d 1187, 1188 (11th Cir. 1997).

Although Mason has not filed a notice of appeal from the district court’s order denying IFP or the omnibus order requiring Mason to get court approval before filing any additional pleadings or lawsuits, Mason may raise all of these issues on appeal. See generally, Procup v. Strickland, 760 F.2d 1107 (11th Cir. 1985) (reviewing the district court’s order enjoining a defendants from filing additional pleadings unless they were first submitted by an attorney admitted to practice in that court); United States v. Bailey, 175 F.3d 966 (11th Cir. 1999) (reviewing a district court’s decision not to recuse itself for abuse of discretion); Camp v. Oliver, 798 F.2d 434 (11th Cir. 1996) (reviewing district court’s order denying IFP for abuse of discretion). Although Mason alleges that the district court has failed to permit him to file a notice of appeal, the district court’s docket sheet does not reflect that it has ever received a notice of appeal or that it had been returned, and Mason does not attach any correspondence to his mandamus petition to support this claim.

Accordingly, Mason’s IFP motion is **DENIED** because his mandamus petition is frivolous.

/s/ FRANK M. HULL

UNITED STATES CIRCUIT JUDGE