

IN THE UNITED STATES
SUPREME COURT

In re KEVIN FAHRNI, §
petitioner §

v. §

UNITED STATES
SUPREME COURT
No. N/A

BOBBY LUMPKIN, T.D.C.J. Director, §
ROBERT W. SCHROEDER, U.S. D.C.J., §
BILL MILLER, T.J., §
JERRY ROCHELLE, D.A., §
KELLEY CRISP, A.D.A., §
respondents §

COURT OF APPEALS
FIFTH CIRCUIT
No. 23-40552

Motion for Extension of Time

Here comes, Kevin Fahrni, pro se petitioner requesting an extension of time to file the writ of certiorari in the United States Supreme Court for the following reasons:

1. Petitioner had filed a writ of mandamus in the Fifth circuit Court of Appeals in which it was denied with an unpublished opinion March 15, 2024.
2. Petitioner was notified of this denial on March 26, 2024 through Texas Department Criminal Justice mailroom.
3. Petitioner had filed a Motion to Reconsider and accept jurisdiction on March 29, 2024 and a Motion for permission to refile the § 2254 writ of habeas corpus on April 1, 2024.

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SUPREME COURT, U.S.

4. On May 21, 2024, petitioner sent a letter to the 5th circuit clerk to inquire into the status of the motions or if they had even been received.

5. The writ of certiorari is completed and ready to mail/file except for the 5th circuit's response for rehearing to complete the section of jurisdiction of the application.

June 15, 2024 is the ninety (90) day deadline to file the writ of certiorari, and petitioner believes he will not have the response from the 5th circuit by then to complete the application on jurisdiction, in which the motions do not toll the 90 days.

Petitioner prays this Honorable Court will Grant the time needed to receive the 5th circuit's court's response and to mail/file immediately the writ of certiorari for the U.S. Supreme Court. In event that no extension of time is Granted, petitioner will request a stay and abeyance for the writ of Certiorari and supplement the record later.

Respectfully submitted,

Kevin Fahrni

Kevin Fahrni

No. 1941419

Estelle Unit

264 FM 3478

Huntsville, TX

77320-3322

Mailed T.D.C.T. mailbox.

May 24, 2024

**United States Court of Appeals
for the Fifth Circuit**

United States Court of Appeals
Fifth Circuit

FILED

March 15, 2024

Lyle W. Cayce
Clerk

No. 23-40552

IN RE KEVIN FAHRNI,

Petitioner.

Petition for Writ of Mandamus to the
United States District Court
for the Eastern District of Texas
USDC No. 5:17-CV-170

UNPUBLISHED ORDER

Before SMITH, SOUTHWICK, and WILSON, *Circuit Judges.*

PER CURIAM:

Kevin Fahrni, Texas prisoner # 1941419, has filed in this court a pro se petition for a writ of mandamus. His motion to supplement the mandamus petition is GRANTED.

Fahrni was convicted by a jury of aggravated sexual assault of a child, and he is currently serving a 50-year sentence. The state appellate court affirmed his conviction. *See Fahrni v. State*, 473 S.W.3d 486, 491–503 (Tex. App. 2015). Fahrni filed a 28 U.S.C. § 2254 application challenging this conviction, but the district court dismissed it as untimely, and a judge of this court denied a certificate of appealability.

In his mandamus petition, Fahrni contends that the state and federal habeas courts refused to address the merits of his assertion that there was no

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evidence to support an element of the offense, even though the claim was properly raised and would entitle him to relief. In addition, he argues that the state habeas court violated his due process rights by failing to hold an evidentiary hearing. Fahrni asks this court to set aside his criminal conviction and sentence or, alternatively, to order the federal district court to make appropriate findings on relevant issues after giving Fahrni an opportunity to respond and then to enter an order granting habeas relief.

“Mandamus is an extraordinary remedy that should be granted only in the clearest and most compelling cases.” *In re Willy*, 831 F.2d 545, 549 (5th Cir. 1987). A party seeking mandamus relief must show both that he has no other adequate means to obtain the requested relief and that he has a “clear and indisputable” right to the writ. *Id.* (internal quotation marks and citation omitted). The condition that a party have no other means to obtain relief is “designed to ensure that the writ will not be used as a substitute for the regular appeals process.” *Cheney v. U.S. Dist. Ct. for D.C.*, 542 U.S. 367, 380–81 (2004); *see also Willy*, 831 F.2d at 549 (stating that mandamus is not a substitute for appeal).

As noted above, the district court has already denied relief on Fahrni’s § 2254 application. To the extent that he is challenging this dismissal, Fahrni has already done so by seeking a certificate of appealability, and mandamus relief is not appropriate. *See Willy*, 831 F.2d at 549. Moreover, our mandamus authority does not extend to directing a district court to reconsider a ruling in a closed case. *Cf. Roche v. Evaporated Milk Ass’n*, 319 U.S. 21, 25 (1943) (limiting mandamus authority to issuance of writs “in aid of a jurisdiction already acquired by appeal” or “to those cases which are within [our] appellate jurisdiction though no appeal has been perfected”). To the extent that Fahrni’s mandamus petition may also be read as a request that we order the state courts to vacate his conviction and sentence, our mandamus authority does not extend to directing state officials in the

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performance of their duties and functions. *Cf. Moye v. Clerk, DeKalb Cnty. Super. Ct.*, 474 F.2d 1275, 1276 (5th Cir. 1973) (holding that federal courts lack “the general power to issue writs of mandamus to direct state courts and their judicial officers in the performance of their duties where mandamus is the only relief sought”).

Fahrni’s petition may also be read as a request that this court grant him habeas relief in the first instance. Although 28 U.S.C. § 2241(a) provides that “[w]rits of habeas corpus may be granted by the Supreme Court, any justice thereof, the district courts and any circuit judge within their respective jurisdictions,” other changes to the habeas corpus laws wrought by the Antiterrorism and Effective Death Penalty Act of 1996 cast doubt on whether circuit judges still possess the authority to entertain an original habeas corpus petition under § 2241. *See Felker v. Turpin*, 518 U.S. 651, 660–61 & n.3 (1996). Under our precedent, any such authority rests in the hands of individual circuit judges, not the court of appeals itself. *See Zimmerman v. Spears*, 565 F.2d 310, 316 (5th Cir. 1977). Each member of this panel declines to exercise original jurisdiction remaining in individual circuit judges. *See id.*

The petition for a writ of mandamus is DENIED.