

in case 1:13CR435-TDS-1 (here, revocation of supervised release) pending this Court's decision regarding Hill's mandamus petition. [Docket Entry #14 in 19-2338]. Hill's mandamus petition and motion for emergency stay were filed in the wake of a similar emergency motion to stay case 1:13CR435-TDS-1, and this Court's denial of that motion, in Hill's direct appeal of his supervised release revocation. [Docket Entry #10-1 and #20 in 19-4758]. This Court has ordered the Government to respond to Hill's motion, Docket Entry #14 in 19-2338. [Docket Entry #15 in 19-2338].

Petitioner Hill enumerates nine bases in his motion to stay [Docket Entry #14 in 19-2338]. In substance, these appear to be claims that: the revocation of his supervised release was accomplished by fraud upon the district court by both the U.S. Probation Office and U.S. Attorney's Office; that such alleged fraud deprived the district court of jurisdiction over Hill; and that a lack of response by the Government to certain self-styled motions in the district court filed pro se by Hill equated to acquiescence to Hill's assertions in those motions. [*Id.*]. The remaining bases do not appear to cite legal claims in support of Hill's emergency motion, but rather are reasons outside of a basis in law. Those include: a recitation of the district court's order regarding Hill's pending surrender to authorities to serve his sentence for the supervised

release revocation; a rationale for not filing the motion with the district court, as Hill alleges it has permitted frauds against Hill; Hill's rationale of why his appointed appellate counsel is unable to adequately address the instant issues; and a recitation of Hill's health concerns, with his conclusion that his pending term of imprisonment is an unnecessary hardship contrary to his desire to remain at home. [*Id.*]

Hill's Mandamus Petition

While the government does not appear to have been ordered to respond to Hill's mandamus petition, it is necessary to address that petition in order to respond to Hill's claims in the instant motion. The claims in Hill's mandamus petition are the same as those summarized above: that the revocation of his supervised release was accomplished by fraud upon the district court by both the U.S. Probation Office and U.S. Attorney's Office; that such alleged fraud deprived the district court of jurisdiction over Hill; and that a lack of response by the Government to certain self-styled motions in the district court filed pro se by Hill equated to acquiescence to Hill's claims in those motions. [Docket Entry #3 and #14 in 19-2338]. Hill's claims stem from the September 12, 2019, hearing, in which Hill was found to be in willful violation of conditions of supervised release by the Honorable Thomas D. Schroeder. [DE #186 and

Docket Entry Text for 09/12/2019]. That revocation is the subject of a pending appeal in case 19-4758. When Hill challenged the accuracy of the transcript of the revocation hearing, Chief Judge Schroeder issued an order denying Hill's challenge. [Docket Entry #216, #223 in case 1:13CR-435-TDS-1]. Chief Judge Schroeder's Memorandum Order contains a succinct recitation of the facts of Hill's revocation hearing, and the undersigned submits that reference to that Order is of great utility in disposing of Hill's claims in the instant motion. [Docket Entry #223 in case 1:13CR-435-TDS-1].

Hill's claims that his supervised release revocation was initiated and secured by frauds on the court is belied by the district court's findings in its Memorandum Order regarding the accuracy of the transcript, which states in relevant portion:

Mr. Hill was caught by law enforcement exposing himself in public throughout his hometown in Martinsville, Virginia, in the early morning hours of September 21, 2018, proof of which was provided by officer testimony as well as photographs Mr. Hill took of himself on his camera. At the time he was apprehended, Mr. Hill was completely naked, except for footwear. The Defendant was convicted of indecent exposure in state court in Virginia in 2018, and his federal revocation proceeding followed.

Docket Entry #223 at 1 in case 1:13CR-435-TDS-1. In Hill's petition for mandamus and in his instant motion for stay, he does not provide proof of his claims of fraud upon the court in terms of relevant portions of the record,

contravening evidence, or any other justification for the extraordinary relief he seeks in the form of mandamus; rather, Hill only offers unsupported conclusory statements of fraud. Hill's allegations of jurisdictional defects in his revocation hearing relate to his conclusory allegations of fraud, and again he offers no evidence beyond those unsupported allegations.

Hill's remaining claims are that his unanswered motions in the district court result in a sort of default judgment in his favor regarding claims Hill makes in those motions. [Docket Entry #14 at 1-2; #3 at 5-6 (claiming without any legal reference, "When the other party is accused of getting an illegal order or judgment by perpetuating a fraud upon the court and that other party never contests such allegations, then those allegations are facts and are true, and warrant vacatur of voidable judgments.")]. There are to date 230 docket entries in Middle District of North Carolina case 1:13CR-435-1 (independent of Hill's appeal in 15-4057), many of which are pro se filings by Hill, having a total page volume in the thousands.¹ [see Docket in 1:13CR-435-TDS-1]. Many of Hill's pro se filings are self-styled with regard to caption and basis, including those

¹ The undersigned submits that the volume and content of Hill's pro se filings are best understood in light of findings in his Presentence Report, beginning at the last paragraph on Page 14 and continuing to the next three paragraphs on page 15. [Docket Entry 33 in Case 1:13CR-435-1].

cited in his instant motion. [See, e.g., “Request that the U.S. District Court Vacate Fraudulent Begotten Judgment, Vacate the Frauds upon the Court against Brian David Hill”, Docket Entry #217 in case 1:13CR-435-TDS-1]. Hill makes such pro se motions at a time when he has appointed counsel, as he now does during the pendency of his appeal in case 19-4758. When ordered by this Court or the district court, the Government responds to Hill’s pro se motions. There were no such orders of any court obligating the Government to respond to the motions he cites in his instant motion and petition for mandamus. As such, the government never conceded to facts alleged by Hill in his pro se motions.

The government submits that Hill has simply restyled his emergency motion for a stay of imprisonment pending appeal following this Court’s denial of that motion. [Docket Entry #10-1 and #20 in 19-4758]. Hill’s claims have no legal basis, but instead result from his stated opinion that his imprisonment is an unnecessary hardship rather than remaining at home. [Docket Entry #14 in 19-2338]. Mandamus may not be used as a substitute for appeal. *In re Lockheed Martin Corp.*, 503 F.3d 351, 353 (4th Cir. 2007). Mandamus relief is a drastic remedy and should be used only in extraordinary circumstances. *Kerr v. U.S. Dist. Court*, 426 U.S. 394, 402 (1976); *United States v. Moussaoui*,

333 F.3d 509, 516-17 (4th Cir. 2003). Mandamus relief is available only when the petitioner has a clear right to the relief sought. *In re Murphy-Brown, LLC*, 907 F.3d 788, 795 (4th Cir. 2018). Here, Hill wholly fails to demonstrate such clear right to relief through mandamus, and further fails to demonstrate why he should be granted the extraordinary relief in the form of a stay of imprisonment pending his mandamus petition.

WHEREFORE, the United States respectfully requests that the Court deny Hill's "Emergency Motion for Stay" in Docket Entry #14 of the instant case.

Respectfully submitted this 27th day of November, 2019.

Respectfully submitted,

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UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

UNITED STATES OF AMERICA,)	
)	
Respondent,)	
)	
v.)	NO. 19-2338
)	
BRIAN DAVID HILL,)	
)	
Petitioner.)	
_____)	

CERTIFICATE OF SERVICE

I hereby certify that on November 27, 2019, the foregoing was sent via
First Class Mail to the Petitioner at:

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Respectfully submitted,
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