

No. 11-3528

UNITED STATES COURT OF APPEALS  
FOR THE SIXTH CIRCUIT

**FILED**  
**Aug 09, 2011**  
LEONARD GREEN, Clerk

In re: ROBERT MARTIN, )  
 )  
Petitioner. ) ORDER  
 )  
 )

Before: GUY, SUTTON, and GRIFFIN, Circuit Judges.

Robert Martin, an Ohio inmate, seeks a writ of mandamus directing the clerk of the Southern District of Ohio to file Martin’s pro se “motion” in this class-action suit. He also moves for leave to proceed *in forma pauperis*. The underlying action, *Fussell v. Wilkinson*, No. 1:03-cv-00704 (S.D. Ohio), was brought on behalf of a class of Ohio prisoners and sought injunctive relief and damages for alleged “system-wide deliberate indifference to the serious medical needs of Ohio prisoners.” In 2005, after the certification of a plaintiff class, the district court approved a settlement agreement.

In April 2011, Martin wrote a one-paragraph letter to the district court judge stating the doctor at his facility had told him that further diagnostic testing had been denied and complaining about the grievance procedures. On April 28, 2011, the district court clerk returned Martin’s letter and advised him to submit it to the class counsel. Martin asks this court to direct the district court clerk to file the letter as a motion under Federal Rule of Civil Procedure 60(b).

It is “axiomatic that “[m]andamus relief is an extraordinary remedy, only infrequently utilized by this court.” *John B. v. Goetz*, 531 F.3d 448, 457 (6th Cir. 2008) (quoting *In re Perrigo Co.*, 128 F.3d 430, 435 (6th Cir. 1997)). Before a petitioner may invoke the extraordinary writ of mandamus against the district court, “he must establish that he has a clear and certain right and that the duties of the respondent are ministerial, plainly defined and peremptory.” *United States v. Bilsky*, 664 F.2d

No. 11-3528

- 2 -

613, 619 (6th Cir. 1981) (quoting *Martins Ferry Hosp. Ass'n v. NLRB*, 654 F.2d 455 (6th Cir. 1981)). In this case, the clerk had no such duty. Martin's letter is not a motion for relief, and the clerk reasonably returned the letter, with the suggestion to contact class counsel.

The petition for a writ of mandamus is **DENIED**. Because we deny the petition, the motion to proceed *in forma pauperis* is denied as moot.

ENTERED BY ORDER OF THE COURT



---

Clerk

UNITED STATES COURT OF APPEALS  
FOR THE SIXTH CIRCUIT

Leonard Green  
Clerk

100 EAST FIFTH STREET, ROOM 540  
POTTER STEWART U.S. COURTHOUSE  
CINCINNATI, OHIO 45202-3988

Tel. (513) 564-7000  
[www.ca6.uscourts.gov](http://www.ca6.uscourts.gov)

Filed: August 09, 2011

Robert Martin  
Pickaway Correctional Institution  
P.O. Box 209  
Orient, OH 43146

Re: Case No. 11-3528, *In re: Robert Martin*  
Originating Case No. : 03-00704

Dear Sir or Madam,

The Court issued the enclosed (Order/Opinion) today in this case.

Sincerely yours,

s/Jill Colyer  
Case Manager  
Direct Dial No. 513-564-7024

cc: Mr. James Bonini

Enclosure

No mandate to issue