

NOTE: This order is nonprecedential.

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

In re: FREDERICK C. FERMIN,
Petitioner

2021-174

On Petition for Writ of Mandamus to the United States Court of Appeals for Veterans Claims in No. 18-6419, Senior Judge William A. Moorman.

ON PETITION AND MOTION

Before DYK, PROST, and HUGHES, *Circuit Judges*.

PER CURIAM.

O R D E R

Frederick C. Fermin seeks “extraordinary relief pursuant to Local Rule 21(a),” ECF No. 2 at 1,* to compel the United States Court of Appeals for Veterans Claims to strike its August 31, 2020 order in his case. Mr. Fermin

* Federal Circuit Rule 21 authorizes parties to file writs of mandamus and prohibition and other extraordinary writs.

also moves for leave to supplement his “writ for extraordinary relief under Rule 21,” ECF No. 13.

On January 28, 2020, the Veterans Court issued a decision affirming in part a decision of the Board of Veterans’ Appeals. In March 2020, Mr. Fermin appealed to this court. On August 4, 2020, this court dismissed Mr. Fermin’s appeal for lack of jurisdiction. While his appeal was pending before this court, Mr. Fermin filed at the Veterans Court a motion to recall the judgment and to reconsider the January 28, 2020 decision. On August 31, 2020, the Veterans Court denied that motion. Mr. Fermin did not file a notice of appeal from that decision. Instead, on July 26, 2021, Mr. Fermin filed this petition at this court seeking to compel the Veterans Court to strike that order.

Mandamus relief is not appropriate when a petitioner fails to seek relief through the normal appeal process. *See Roche v. Evaporated Milk Ass’n*, 319 U.S. 21, 26 (1943) (explaining that mandamus “may not appropriately be used merely as a substitute for the appeal procedure prescribed by the statute”); *In re Pikulin*, 243 F.3d 565 (Fed. Cir. 2000) (unpublished table decision) (denying a petition for writ of mandamus because the petitioner “had sixty days after the entry of judgment” to file an appeal and “did not do so”). Because Mr. Fermin here failed to seek review of the Veterans Court’s order by way of a timely filed direct appeal, we must deny his request for this extraordinary relief.

Accordingly,

IT IS ORDERED THAT:

(1) The motion for leave to supplement is granted to the extent that ECF No. 13 is accepted for filing as a supplement to Mr. Fermin’s petition, ECF No. 2.

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(2) The petition, ECF No. 2, is denied.

FOR THE COURT

September 24, 2021
Date

/s/ Peter R. Marksteiner
Peter R. Marksteiner
Clerk of Court

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