

March 28, 2011

UNITED STATES COURT OF APPEALS
FOR THE TENTH CIRCUITElisabeth A. Shumaker
Clerk of Court

In re:

STEPHEN BLACKBURN,

Petitioner.No. 11-3061
(D.C. No. 2:09-CR-20133-JWL-JPO-12)
(D. Kan.)

ORDER

Before **MURPHY, HARTZ, and O'BRIEN**, Circuit Judges.

Stephen Blackburn, proceeding pro se, seeks a writ of mandamus or prohibition ordering the district court to dismiss certain criminal charges pending against him. These writs are extraordinary relief, reserved for “exceptional circumstances, amounting to a judicial usurpation of power.” *Allied Chem. Corp. v. Daiflon, Inc.*, 449 U.S. 33, 35 (1980) (mandamus); *see also Univ. of Tex. at Austin v. Vratil*, 96 F.3d 1337, 1339 (10th Cir. 1996) (noting similar standards for writ of prohibition). Because there are no such circumstances in this case, the petition will be denied.

Mr. Blackburn contends the district court does not have jurisdiction to preside over the United States’s criminal prosecution of him for violations of 21 U.S.C. §§ 841 and 846. He recites a number of reasons in support: (1) the

district court is not an Article III court; (2) the district court “lacks in personam, territorial and subject matter jurisdiction to hear, convict or bring any case against this Petitioner (Absolute Sovereign American)” under the Eleventh Amendment, Pet. at 7; *see also id.* at 15; (3) “Criminal Jurisdiction of the United States found at 18 U.S.C. § 3231 is vested in District Courts of the United States, not the United States District Courts,” *id.* at 8; (4) “the Supreme Law of the Land (The Constitution) is Contract Law and it falls under the Uniform Commercial Code,” yet the court and prosecutors “have not established on record any contract between this Petitioner and [the government],” *id.* at 10; (5) “No Criminal Complaint with an Affidavit from a probable Cause hearing has been filed in this said case . . . or Returned in Open Court or on the legal docket,” *id.* at 11; (6) he is entitled to subpoena the Attorney General of the United States to verify the certification of §§ 841 and 846, which certification is required because Title 21 of the United States Code is non-positive law, which is rebuttable by production of acts at variance with the United States Code; (7) no law has been broken because “[t]his Petitioner, absolute Sovereign, is not registered nor has he received any benefits from any Federal Agency regulating Controlled Substances,” *id.* at 14; (8) the judge and prosecutors are ignoring their oaths to uphold the Constitution; (9) the court has ignored his self-executed “Act of State doctrine with an Apostille,” which establishes his sovereign status and invokes the Act of State Doctrine (under which “no nation can judge the legality of a foreign country’s

sovereign acts within its own territory”), *id.* at 17; and (10) government officials have failed to state a claim against him.

The district court has shown admirable patience with Mr. Blackburn’s ill-advised contentions. Addressing Mr. Blackburn’s multiple dismissal motions in a thorough order dated December 3, 2010, it deemed his arguments (most of which are the same as the assertions before this court) meritless. For substantially the reasons stated by the district court in denying the dismissal motions, we conclude the mandamus petition is frivolous.

Mr. Blackburn’s motion to proceed in forma pauperis is DENIED for failure to assert a non-frivolous argument. The petition for a writ of mandamus or prohibition is DENIED.

Entered for the Court,

A handwritten signature in cursive script, reading "Elisabeth A. Shumaker", followed by a horizontal flourish line.

ELISABETH A. SHUMAKER, Clerk