

BLD-109

NOT PRECEDENTIAL

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 18-3025

LESLIE E. THOMAS,
Appellant

v.

UNION COUNTY COURT

On Appeal from the United States District Court
for the Middle District of Pennsylvania
(D.C. Civil Action No. 4-17-cv-00505)
District Judge: Honorable Malachy E. Mannion

Submitted for Possible Summary Action
Pursuant to Third Circuit LAR 27.4 and I.O.P. 10.6
February 21, 2019

Before: AMBRO, KRAUSE and PORTER, Circuit Judges

(Opinion filed: February 27, 2019)

OPINION*

PER CURIAM

* This disposition is not an opinion of the full Court and pursuant to I.O.P. 5.7 does not constitute binding precedent.

Leslie Thomas appeals from an order of the United States District Court for the Middle District of Pennsylvania, which dismissed his petition for a writ of error coram nobis for lack of jurisdiction. As we agree that the District Court lacked jurisdiction, we will summarily affirm the District Court's judgment.

Following a jury trial in 1995, Thomas was convicted of indecent assault, corruption of a minor, and endangering the welfare of a child. According to Thomas, he was released from prison over 24 years ago, after serving his criminal sentence. Thomas's coram nobis petition alleged that he was wrongly convicted because of errors committed by his attorney and the trial court. He asked the District Court to vacate his conviction and expunge his criminal record. The District Court dismissed Thomas's petition, determining that it lacked jurisdiction to grant the relief he sought.¹ Thomas appealed.²

¹ Thomas also filed documents in the District Court that were construed as motions to reconsider. The District Court denied those motions. Dkt. #53. Thomas did not appeal from that order, so we do not consider it here. See Fed. R. App. P. 4(a)(4)(B)(ii).

² We exercise plenary review of a district court's decision to dismiss for lack of subject matter jurisdiction. See GBForefront, L.P. v. Forefront Management Group, LLC, 888 F.3d 29, 34 n.5 (3d Cir. 2018). In determining whether the District Court had jurisdiction, we consider the allegations of the petition in the light most favorable to Thomas. See Giovanni v. Dep't of Navy, 906 F.3d 94, 102 (3d Cir. 2018). We may take summary action if an appeal fails to present a substantial question. See 3d Cir. I.O.P. 10.6.

As the District Court properly determined, and as we have informed Thomas previously,³ federal courts lack jurisdiction to entertain a petition for a writ of error coram nobis if the petitioner seeks to vacate a state court conviction. See Obado v. New Jersey, 328 F.3d 716, 718 (3d Cir. 2003) (per curiam). Thomas argues here, as he did in the District Court, that the state court “lost jurisdiction” because of the errors in his trial. Thomas does not support this argument by citation to authority, but even if he were correct, a loss of jurisdiction in state court would not somehow create jurisdiction in federal court. See Cardona v. Bledsoe, 681 F.3d 533, 535 (3d Cir. 2012) (“Federal courts are courts of limited jurisdiction. They possess only that power authorized by Constitution and statute.” (quoting Kokkonen v. Guardian Life Ins. Co. of Am., 511 U.S. 375, 377 (1994))).

Because the District Court properly dismissed Thomas’s petition for lack of jurisdiction, we will summarily affirm the District Court’s judgment.⁴

³ In 2002, Thomas filed a petition for a writ of error coram nobis directly with this Court. We dismissed the petition for lack of jurisdiction. See C.A. No. 02-2423 (judgment entered July 24, 2002). We also transferred that petition to the District Court to be construed as a notice of appeal from the District Court’s denial of his petition filed under 24 U.S.C. § 2254. We later denied Thomas’s application for a certificate of appealability, noting that Thomas had failed to show that jurists of reason would find it debatable whether the district court was correct in ruling that his petition was untimely. See C.A. No. 02-3097.

⁴ Thomas’s motion for appointment of counsel and his other motions are denied.

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On Appeal from the United States District Court
for the Middle District of Pennsylvania
(D.C. Civil Action No. 4-17-cv-00505)
District Judge: Honorable Malachy E. Mannion

Submitted for Possible Summary Action
Pursuant to Third Circuit LAR 27.4 and I.O.P. 10.6
February 21, 2019

Before: AMBRO, KRAUSE and PORTER, Circuit Judges

JUDGMENT

This cause came to be considered on the record from the United States District Court for the Middle District of Pennsylvania and was submitted for possible summary action pursuant to Third Circuit LAR 27.4 and I.O.P. 10.6 on February 21, 2019. On consideration whereof, it is now hereby

ORDERED and ADJUDGED by this Court that the judgment of the District Court entered August 9, 2018, be and the same hereby is affirmed. All of the above in accordance with the opinion of this Court.

ATTEST:

s/ Patricia S. Dodszuweit
Clerk

DATED: February 27, 2019

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF PENNSYLVANIA

LESLIE E. THOMAS, :
Petitioner : CIVIL ACTION NO. 4:17-505
v. : (JUDGE MANNION)
UNION COUNTY COURT, :
Respondent :
ORDER

Pending before the court is the report of Magistrate Judge Susan E. Schwab, which recommends that the respondent's motion to dismiss be granted. (Doc. 43). No objections have been filed to Judge Schwab's report. Upon review, the court will adopt the report and recommendation of Judge Schwab in its entirety.

When no objection is made to the report and recommendation of a magistrate judge, the court should, as a matter of good practice, "satisfy itself that there is no clear error on the face of the record in order to accept the recommendation." Fed. R. Civ. P. 72(b), advisory committee notes; see also Univac Dental Co. v. Dentsply Intern., Inc., 702 F.Supp.2d 465, 469 (M.D.Pa. 2010) (citing Henderson v. Carlson, 812 F.2d 874, 878 (3d Cir. 1987) (explaining judges should give some review to every report and recommendation)). Nevertheless, whether timely objections are made or not, the district court may accept, not accept, or modify, in whole or in part, the findings or recommendations made by the magistrate judge. 28 U.S.C.

§636(b)(1); Local Rule 72.31.

On March 23, 2017, the petitioner filed the instant action as a petition for a writ of error *coram nobis* pursuant to the All Writs Act, 28 U.S.C. §1651, in which he asks the court to vacate and expunge his 1995 convictions for indecent assault, corruption of a minor, and endangering the welfare of a child. (Doc. 1). An amended petition was filed on April 11, 2017. (Doc. 4). The respondent has filed a motion to dismiss the petition pursuant to Fed.R.Civ.P. 12(b)(6) for lack of subject matter jurisdiction. (Doc. 14).

In order to be eligible for a writ of error *coram nobis* following completion of a criminal sentence, a petitioner must have been released from custody, must ask for relief in the court that convicted him, and must demonstrate both exceptional circumstances and continuing collateral disadvantages which justify review. (Doc. 43, p. 5) (citations omitted). In this case, Judge Schwab determined that the plaintiff has not met a key prerequisite for *coram nobis*, in that he has not petitioned for relief in the court that originally convicted him. Judge Schwab therefore concludes that this court lacks subject matter jurisdiction over the petition. This court finds no clear error of record and agrees with the sound reasoning that led Judge Schwab to her conclusions and will, therefore, adopt Judge Schwab's report in its entirety.

NOW, THEREFORE, IT IS ORDERED THAT:

- (1) The report and recommendation of Judge Schwab, (Doc. 43), is ADOPTED IN ITS ENTIRETY.**
- (2) The respondent's motion to dismiss the instant petition, (Doc. 14), is GRANTED.**
- (3) The amended petition for writ of error *coram nobis*, (Doc. 4), is DISMISSED.**
- (4) The Clerk of Court is directed to CLOSE THIS CASE.**

S/Malachy E. Mannion
MALACHY E. MANNION
United States District Judge

Date: August 9, 2018

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UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

LESLIE E. THOMAS,	:	CIVIL NO: 4:17-CV-00505
	:	
Petitioner,	:	
	:	(Judge Mannion)
v.	:	
	:	(Chief Magistrate Judge Schwab)
UNION COUNTY COURT,	:	
	:	
Respondent.	:	

REPORT AND RECOMMENDATION

I. Introduction.

In this petition for a writ of error *coram nobis* pursuant to the All Writs Act, 28 U.S.C. § 1651, the *pro se* petitioner Leslie E. Thomas (“Mr. Thomas”) asks the Court to vacate and expunge his 1995 convictions for indecent assault, corruption of a minor, and endangering the welfare of a child. Mr. Thomas alleges that he was wrongly convicted of these crimes because of errors committed by his attorney and the court regarding witness testimony and jury instructions. Before the Court is the motion of the respondent, the Union County Court of Common Pleas (“Union County Court”), asking the Court to dismiss Mr. Thomas’s petition pursuant to Fed. R. Civ. P. 12(b)(1) for lack of subject matter jurisdiction. Because this Court lacks jurisdiction to grant a writ of error *coram nobis* to a petitioner seeking to vacate a state court conviction, we recommend that the Court dismiss Mr. Thomas’s petition.

II. Background and Procedural History.

Mr. Thomas, proceeding *pro se*, petitioned this Court for a writ of error *coram nobis* on March 23, 2017, alleging that he was convicted of indecent assault, corruption of a minor, and endangering the welfare of a child despite serious errors by defense counsel and the court. *Doc. 1*. We ordered Mr. Thomas to file an amended petition clarifying whom he intended to name as the respondent. *Doc. 3*. Mr. Thomas filed an amended petition on April 11, 2017, naming “Union County Court” as the respondent and again alleging errors at his trial. *Doc. 4*. Mr. Thomas seeks that his convictions be set aside; that his record be expunged; and that all records of his arrest, indictment, and conviction be sealed. *Doc. 4* at 1–5.

Union County Court filed the instant motion to dismiss and a supporting brief on September 12, 2017, asking that the Court dismiss Mr. Thomas’s petition pursuant to Fed. R. Civ. P. 12(b)(1) for lack of subject matter jurisdiction. *Docs. 14, 15*. Mr. Thomas responded with an initial brief in opposition (*doc. 7*) and then an excess of separate filings supplementing his brief (*see, e.g., docs. 18 – 25, doc. 28*). Union County Court filed a motion on February 13, 2018, to stay discovery pending a ruling on its motion to dismiss. *Doc. 26*. We granted Union County Court’s motion to stay on May 4, 2018, and also ordered Mr. Thomas to file one comprehensive brief in opposition to the motion to dismiss. *Doc. 37*. Mr. Thomas

has now filed his comprehensive brief in response. *See doc. 38.* The issues, therefore, have been fully briefed and the motion to dismiss is ripe for decision.

III. Discussion.

Mr. Thomas has petitioned this Court for a writ of error *coram nobis* pursuant to the All Writs Act, 28 U.S.C. § 1651(a). We recommend that Mr. Thomas's petition be dismissed because the Court lacks subject matter jurisdiction to grant the relief that he seeks.

The writ of error *coram nobis*, an obscure remedy in federal court, is authorized by the All Writs Act, which provides that “all courts established by Act of Congress may issue all writs necessary or appropriate in aid of their respective jurisdictions and agreeable to the usages and principles of law.” 28 U.S.C. § 1651(a). A United States District Court may issue a writ of error *coram nobis* only to correct “errors of the most fundamental character.” *See United States v. Morgan*, 346 U.S. 502, 512 (1954) (citing *United States v. Mayer*, 235 U.S. 55, 69 (1914)). The writ of error *coram nobis* “is an extraordinary remedy and a court’s jurisdiction to grant relief is of limited scope.” *Phillips v. Noward*, 614 F. App’x 583, 586 (3d Cir. 2015) (citing *United States v. Baptiste*, 223 F.3d 188, 189 (3d Cir. 2000)). Indeed, Congress has abolished the writ in civil cases, *see Fed. R. Civ. P. 60(e)*, and the traditional view is that *coram nobis* relief is only available in criminal cases “from the court that issued the criminal judgment.” *Phillips*, 614 F.

App'x at 586 (citing *Sinclair v. Louisiana*, 679 F.2d 513, 514 (5th Cir. 1982), and *Lowery v. McCaughtry*, 954 F.2d 422, 423 (7th Cir. 1992)). A petitioner traditionally invokes the writ of error *coram nobis* “to attack convictions with continuing consequences when the petitioner is no longer in custody.” *Id.* A federal district court in the Third Circuit, however, “lacks jurisdiction to entertain a petition for a writ of error *coram nobis* where a petitioner seeks to vacate a state court conviction.” *In re Thompson*, 449 F. App'x 110, 111 (3d Cir. 2011) (discussing *Obado v. New Jersey*, 328 F.3d 716, 718 (3d Cir. 2003)).

In *Obado v. New Jersey*, the Third Circuit considered whether to certify the appeal of a habeas corpus petitioner who had been convicted of drug possession in state court. *Obado*, 328 F.3d at 716–17. The Court of Appeals construed the habeas corpus petition as a petition for a writ of error *coram nobis* because the petitioner had filed after his release from custody. *Id.* at 717. The Court of Appeals declined to certify the petitioner’s appeal, reasoning that “*coram nobis* is not available in a federal court as a means of attack on a state criminal judgment.” *Id.* at 718. The Court of Appeals further explained that “to qualify for relief under *coram nobis* after a sentence has been served, the petitioner must show exceptional circumstances and continuing collateral disadvantages.” *Id.* at 718 (citing *United States v. Osser*, 864 F.2d 1056, 1059 (3d Cir. 1989)).

In the matter of *Thompson*, the Court of Appeals applied its earlier reasoning in *Obado* to its consideration of another *coram nobis* petition. The petitioner, a citizen of Nigeria, filed his *coram nobis* petition directly with the Third Circuit after he was convicted in federal court and removed from the United States. *In Re Thompson*, 449 F. App'x at 110–11. The Court of Appeals declined to issue the writ, reasoning that “the ‘usages and principles of law’ send an applicant seeking *coram nobis* to the court that issued the judgment,” rather than a reviewing court. *See id.* at 111 (quoting 28 U.S.C. § 1651(a)). The Court of Appeals explained that the writ of error *coram nobis* “arose as a device to extend the period in which the judge who rendered a decision could reexamine it.” *Id.* (citing *Lowery*, 954 F.2d at 423). The Court of Appeals also cited to *Sinclair*, which reasoned that a “writ of error *coram nobis* can only issue to aid the jurisdiction of the court in which the conviction was had.” *Id.* (citing *Sinclair*, 679 F.2d at 514). The Court of Appeals concluded that it lacked original jurisdiction and dismissed Thompson’s petition. *Id.*

Thus, in order to be eligible for a writ of error *coram nobis* following completion of a criminal sentence, a petitioner must have been released from custody, must ask for relief in the court that convicted him or her, and must demonstrate both exceptional circumstances and continuing collateral disadvantages which justify review. *See Phillips*, 614 F. App'x at 586; *In Re*

Thompson, 449 F. App'x at 111; *Obado*, 328 F.3d at 718; *Morgan*, 346 U.S. at 512. Whether the petitioner has asked for relief in the court that convicted him or her is an important threshold question, for a federal court that played no role in the petitioner's conviction is without authority to issue a writ of error *coram nobis*. Issuance of the writ by a procedurally extraneous court would neither aid that court's jurisdiction, which it would have originally lacked over the petitioner's criminal case, nor be agreeable to the usages and principles of law, which have traditionally restricted the writ to the court that rendered judgment. The All Writs Act, therefore, does not confer subject matter jurisdiction on a federal court to grant the writ of error *coram nobis* when a petitioner seeks relief from a state court criminal conviction.

Here, Mr. Thomas has not met a key prerequisite for *coram nobis* review: he has not petitioned for relief in the court that originally convicted him, but has instead filed his petition in the Middle District of Pennsylvania naming Union County Court as the respondent. As the Middle District of Pennsylvania played no apparent role in the state court convictions that Mr. Thomas disputes, this Court is without jurisdiction to consider the merits of his petition.

Mr. Thomas nonetheless argues that we should consider his petition because "the Union County Court lost Jurisdiction of the Trial." *Doc.* 38 at 1. In support of that argument, Mr. Thomas has provided the Court with excerpts of the

transcript of his trial which indicate, he alleges, that a witness for the prosecution committed perjury. *See id.* at 1-2; *doc. 38-1* at 2. Mr. Thomas further argues that the lapse of time since his conviction in 1995 should not prevent this Court from granting him relief, as a South Carolina trial court has granted a writ of error *coram nobis* 70 years after sentencing a young man to death and carrying out his execution. *See doc. 38* at 1; *doc. 38-1* at 1. None of Mr. Thomas's arguments, however, address the fundamental obstacle that this Court would be acting without subject matter jurisdiction in considering Mr. Thomas's petition on the merits. Mr. Thomas's petition for a writ of error *coram nobis*, therefore, should be dismissed.¹

¹ Mr. Thomas's remaining arguments, to the extent that we can discern them, are unavailing. For instance, he obliquely references the "Kids for cash Scandal" and duplicates witness testimony from his trial in state court. *Doc. 38* at 2-3. He also argues that the victim's testimony about watching lurid VHS tapes at his direction was inconsistent because Mr. Thomas "had x-rated for free from a SATELLITE DISH." *Id.* at 4.

IV. Recommendation.

In view of the foregoing discussion, **IT IS RECOMMENDED** that Union County Court's motion to dismiss (*doc. 14*) be **GRANTED** and that Mr. Thomas's petition for a writ of error *coram nobis* be **DISMISSED**.

The parties are further placed on notice that pursuant to Local Rule 72.3:

Any party may object to a magistrate judge's proposed findings, recommendations or report addressing a motion or matter described in 28 U.S.C. § 636 (b)(1)(B) or making a recommendation for the disposition of a prisoner case or a habeas corpus petition within fourteen (14) days after being served with a copy thereof. Such party shall file with the clerk of court, and serve on the magistrate judge and all parties, written objections which shall specifically identify the portions of the proposed findings, recommendations or report to which objection is made and the basis for such objections. The briefing requirements set forth in Local Rule 72.2 shall apply. A judge shall make a de novo determination of those portions of the report or specified proposed findings or recommendations to which objection is made and may accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge. The judge, however, need conduct a new hearing only in his or her discretion or where required by law, and may consider the record developed before the magistrate judge, making his or her own determination on the basis of that record. The judge may also receive further evidence, recall witnesses or recommit the matter to the magistrate judge with instructions.

/S/ Susan E. Schwab
Susan E. Schwab
United States Magistrate Judge

Submitted July 24, 2018.

**Additional material
from this filing is
available in the
Clerk's Office.**