APPENIX A

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,

-against-

REGINA LEWIS,

Defendant.

12-CR-655 (VSB)

ORDER

VERNON S. BRODERICK, United States District Judge:

Defendant Regina Lewis ("Defendant"), since her release from custody, has filed various documents, including the following: (1) a Writ of Error *Coram Nobis* filed on September 21, 2016 ("Initial Writ"), (Doc. 159); (2) various letters related to the Initial Writ filed between October 7, 2016 and March 22, 2017, (Docs. 160–74); (3) a Writ of Error *Coram Nobis* filed on March 28, 2017 ("Second Writ"), (Doc. 177); (4) two letters related to the Second Writ filed between March 30, 2017 and April 11, 2017, (Docs. 178–79); and (5) motions purportedly filed pursuant to Rule 60(b) of the Federal Rules of Criminal Procedure filed on May 15, 2017 and July 3, 2017, (Docs. 180, 183). This case was reassigned to me on August 20, 2018. (Doc. 184.) On October 12, 2018, I entered an order, in which I construed Defendant's Initial Writ, Second Writ, and motions pursuant to Rule 60(b) collectively as a *coram nobis* petition filed under the All Writs Act (the "Petition"), and I instructed the United States Attorney's Office for the Southern District of New York (the "Government") to respond to the Petition. (Doc. 185.) The Government filed a memorandum in opposition to the Petition on December 11, 2018, (Doc. 186), and Defendant filed various letters in response on February 13, 2019 and May 15, 2019, (Docs. 188–89). Defendant Lewis seeks to vacate her conviction and sentence. (*See* Doc. 183.)

Lewis is using the Petition as a means to obtain such relief.

"A *coram nobis* petition is a collateral proceeding through which a court may correct fundamental errors in a prior final judgment." *Moskowitz v. United States*, 64 F.Supp.3d 574, 577 (S.D.N.Y. 2014) (citing *United States v. Morgan*, 346 U.S. 502, 507–08 (1954)). A writ of error *coram nobis* is an "extraordinary remedy," *id.* at 578, authorized by the All Writs Act, 28 U.S.C. § 1651. Such relief is "essentially a remedy of last resort for petitioners who are no longer in custody pursuant to a criminal conviction and therefore cannot pursue direct review or collateral relief by means of a writ of habeas corpus." *Fleming v. United States*, 146 F.3d 88, 89–90 (2d Cir. 1998) (per curiam). Further, "the All Writs Act is a residual source of authority to issue writs that are not otherwise covered by statute. Where a statute specifically addresses the particular issue at hand, it is that authority, and not the All Writs Act, that is controlling." *Carlisle v. United States*, 517 U.S. 416, 429 (1996) (quoting *Pa. Bureau of Corr. v. U.S. Marshals Serv.*, 474 U.S. 34, 43 (1985)). As such, the writ of *coram nobis* "is not a substitute for appeal, and relief under the writ is strictly limited to those cases in which errors of the most fundamental character have rendered the proceeding itself irregular and invalid." *Foont v. United States*, 93 F.3d 76, 78 (2d Cir. 1996) (internal quotation marks omitted). "[T]he granting of *coram nobis* normally results in the expungement of the conviction, with no possibility of further proceedings to determine whether the petitioner was guilty of the offense charged." *United States v. Mandanici*, 205 F.3d 519, 532 (2d Cir. 2000).

When seeking *coram nobis* relief, the defendant/petitioner bears the burden of demonstrating that (1) "there are circumstances compelling such action to achieve justice"; (2) "sound reasons exist for failure to seek appropriate earlier relief"; and (3) "the petitioner continues to suffer legal consequences from [her] conviction that may be remedied by granting

of the writ." *Foont*, 93 F.3d at 79 (citations and internal quotation marks omitted). The petitioner bears the burden of proof and "[i]t is presumed [that] the [prior] proceedings were correct." *Morgan*, 346 U.S. at 512.

The various filings submitted by Defendant include references to Supreme Court case law and doctrines such as the rule of lenity, but none of the filings articulates the legal standards for a writ of error *coram nobis* described above or makes any attempt to demonstrate that the circumstances in this case meet those standards.[1] Specifically, Defendant does not demonstrate the circumstances rendering the prior criminal proceeding against her irregular and invalid in such a way as to warrant the relief she seeks, and she does not provide any reasons for her failure to seek appropriate earlier relief. As to the third *Foont* element, although Defendant does imply that her prior conviction in some way prevents her from pursuing certain professions, she does not demonstrate with any specificity how or why the conviction prevents her from pursuing those professions. (*See* Doc. 188.) In any event, assuming that her conviction does prevent her from working in certain professions, such a result does not warrant vacating and/or expunging her conviction. *See United States v. Schnitzer,* 567 F.2d 536, 539 (2d Cir.1977) (holding that expungement is only appropriate in extreme circumstances). "Numerous cases stand for the proposition that difficulty in obtaining employment because of a criminal record is not enough to justify expungement." *United States v. Barrow*, No. 06 Cr. 1084(JFK), 2014 WL 2011689, at *2

[1] In one of the motions purportedly made pursuant to Rule 60(b) of the Federal Rules of Criminal Procedure, Defendant refers to *United States v. Fenton*, 10 F. Supp. 2d 501, 503 (W.D. Pa. 1998), a case in which a court found that 18 U.S.C. § 115(a)(1)(B)—the statute pursuant to which Defendant was charged—was ambiguous. (*See* Doc. 183.) Defendant argues that *Fenton* supports her argument that her conviction "violated the narrow-federal state balance." (*Id.*) Defendant's reliance on that case is misplaced because the case was decided in a different district and is not controlling law. Moreover, although § 115(a)(1)(B) may be unclear as to the legislative aide at issue in *Fenton*, it explicitly lists "United States judge[s]" as a category of person against whom threats are prohibited. *See* 18 U.S.C. § 115(a)(1)(B) (making it a federal crime to "threaten[] to assault, kidnap, or murder . . . a United States judge"). Defendant was charged with and convicted of threatening to kill a federal district court judge, (*see* Doc. 109), conduct that falls squarely and unambiguously within the four corners of § 115(a)(1)(B).

(S.D.N.Y. May 16, 2014) (internal quotation marks omitted); *see also Joefield v. United States,* No. 13–MC–367, 2013 WL 3972650, at *3 (E.D.N.Y. Aug. 5, 2013) (collecting cases). Defendant has therefore failed to meet her burden to demonstrate that her criminal proceeding was irregular and invalid, or that expungement of her conviction is appropriate. Accordingly, it is hereby:

ORDERED that Defendant's Petition for a writ of error *coram nobis* is DENIED. The Clerk of Court is respectfully directed to terminate all open motions and close this case.

SO ORDERED.

Dated: May 30, 2019
New York, New York

Vernon S. Broderick
United States District Judge

UNITED STATES COURT OF APPEALS
FOR THE
SECOND CIRCUIT

At a Stated Term of the United States Court of Appeals for the Second Circuit, held at the Thurgood Marshall United States Courthouse, 40 Foley Square, in the City of New York, on the 16th day of July, two thousand and nineteen,

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Regina Lewis, AKA Sealed Defendant 1,

Petitioner,

v.

United States of America,

Respondent.

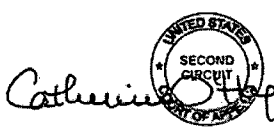
ORDER
Docket No. 19-2148

On May 18, 2018 this Court entered an order in Regina Lewis v. County of Orange, N.Y., 16-4017, Regina Lewis v. City of Newburgh, New York, 16-4041, Regina Lewis v. County of Orange, N.Y., 16-4082 requiring appellant to file a motion seeking leave of this Court prior to filing any future appeals.

A notice of appeal in the above referenced case was filed. The Court has no record that appellant sought the Court's permission to appeal prior to filing the notice of appeal.

IT IS HEREBY ORDERED that this case is dismissed effective July 30, 2019 unless a motion seeking leave of this Court is filed by that date.

For The Court:
Catherine O'Hagan Wolfe,
Clerk of Court



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