

NOT FOR PUBLICATION

FILED

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

OCT 30 2020

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

UNITED STATES OF AMERICA,

No. 19-35674

Plaintiff-Appellee,

D.C. Nos. 3:13-cv-02099-MA
3:80-cr-00082-MA-1

v.

LAWRENCE DOBY WILSON, AKA Amin
A. Rashid,

MEMORANDUM*

Defendant-Appellant.

Appeal from the United States District Court
for the District of Oregon
Malcolm F. Marsh, District Judge, Presiding

Submitted October 26, 2020**

Before: McKEOWN, RAWLINSON, and FRIEDLAND, Circuit Judges.

Federal prisoner Lawrence Doby Wilson appeals pro se from the district court's judgment denying his petition for a writ of error coram nobis, and its order denying his motion under Federal Rule of Civil Procedure 60(b)(1). We have jurisdiction under 28 U.S.C. § 1291. We review de novo the denial of a petition

* This disposition is not appropriate for publication and is not precedent except as provided by Ninth Circuit Rule 36-3.

** The panel unanimously concludes this case is suitable for decision without oral argument. See Fed. R. App. P. 34(a)(2).

APPENDIX "A"

for a writ of error coram nobis, *see United States v. Riedl*, 496 F.3d 1003, 1005 (9th Cir. 2007), and for abuse of discretion the denial of a Rule 60(b)(1) motion, *see In re Tracht Gut, LLC*, 836 F.3d 1146, 1150 (9th Cir. 2016). We affirm.

Wilson contends that his 1980 conviction for interstate transportation of fraudulently obtained funds must be vacated because: he is actually innocent of that offense, he received ineffective assistance of counsel, and his due process rights were violated when an inaccurate record was provided to this court in a prior appeal. To obtain coram nobis relief on these claims, Wilson must show, among other requirements, that “valid reasons exist for not attacking the conviction earlier.” *Riedl*, 496 F.3d at 1006. We agree with the district court that none of the reasons Wilson proffers adequately justifies his delay in presenting his claims. The district court, therefore, properly denied coram nobis relief and did not abuse its discretion by denying Wilson’s Rule 60(b) motion.

AFFIRMED.

2/06/2011
ECF No. 191

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON

UNITED STATES OF AMERICA,

Case No. 3:80-cr-00082-MA

Plaintiff,

v.

ORDER

LAWRENCE DOBY WILSON, aka AMIN
A. RASHID,

Defendant.

MARSH, Judge.

Defendant, a federal prisoner confined at FCI Elkton, brings this proceeding pursuant to 28 U.S.C. § 1651, seeking a writ of *coram nobis* vacating his 1980 conviction for Interstate Transportation of Money taken by Fraud. For the reasons set forth below, this Court denies Defendant's Petition (ECF No. 188).

DISCUSSION

In 1980, Defendant was convicted of Interstate Transportation of Money taken by Fraud. *United States v. Wilson*, 915 F.2d 1582, at *1 (9th Cir. 1990). By 1993, Petitioner had filed a direct appeal and multiple motions to vacate his sentence pursuant to 28 U.S.C. § 2255, all of which were

APPENDIX "B"

denied. *See Wilson*, 915 F.2d 1582, at *1; *United States v. Wilson*, 45 F.3d 438, at *1 (9th Cir. 1994). Defendant subsequently filed two additional § 2255 motions, a motion for relief from judgment pursuant to Fed. R. Civ. P. 60(b)(6), and a petition for a writ of *coram nobis*, all of which were denied. *See United States v. Wilson*, No. 3:80-cr-00082-MA, Orders (ECF Nos. 110, 139, 153, 177).¹

In the instant proceeding, Defendant again seeks a writ of *coram nobis* on the basis that (1) he is actually innocent “given the fact that the Government failed to prove that he ‘fraudulently’ obtained money in the amount of Five Thousand Dollars . . . or more and then took the proceeds or caused the proceeds obtained by ‘fraud’ to be transported” in interstate commerce; and (2) he was “denied his procedural due process right to an accurate transcript on appeal resulting in the Appeals Court ‘mistakenly’ affirming his conviction on the belief that he was convicted of the ‘fraud’ that was necessary to sustain his . . . conviction.” Def’s Pet. for Writ of *Coram Nobis* (ECF No. 188) at 1, 6-8.

Defendant’s claims could have been raised in a prior § 2255 proceeding. It is well settled that a federal prisoner may not challenge his conviction or sentence by way of a common law writ under 28 U.S.C. § 1651 to avoid the limitations placed on successive § 2255 motions. *United States v. Valdez-Pacheco*, 237 F.3d 1077, 1079-80 (9th Cir. 2000); *Carrington v. United States*, 503 F.3d 888, 890 (9th Cir. 2007) (holding that the rule limiting second or successive § 2255 motions does not create a “gap” that can be filled by a common law writ). Accordingly, this Court

¹ In 2011, Defendant was convicted of nine counts of mail fraud and eight counts of aggravated identity theft in the U.S. District Court for the Eastern District of Pennsylvania. *See Rashid v. Warden Philadelphia FDC*, 666 F. App’x 96, 97 (3rd Cir. 2016); *In re Amin A. Rashid*, 628 F. App’x 158, 158 (3rd Cir. 2016). Defendant’s Oregon conviction was used to enhance his Philadelphia convictions. *Rashid*, 666 F. App’x at 97. He currently is serving a 240-month term of imprisonment with a projected release date of July 19, 2027.

denies Defendant's Petition for Writ of *Coram Nobis*.

CONCLUSION

Based on the foregoing, this Court DENIES Defendant's Petition for Writ of *Coram Nobis* (ECF No. 188). To the extent that Defendant's Petition is properly construed as a successive § 2255 motion, this Court DENIES a certificate of appealability because Defendant has not made a substantial showing of the denial of a constitutional right. *See* 28 U.S.C. § 2253(c)(2).

IT IS SO ORDERED.

DATED this 6 day of February, 2019.

Malcolm F. Marsh
Malcolm F. Marsh
United States District Judge

2/06/2019
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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON

UNITED STATES OF AMERICA,

Case No. 3:80-cr-00082-MA

Plaintiff,

JUDGMENT

v.

LAWRENCE DOBY WILSON, aka AMIN
A. RASHID,

Defendant.

MARSH, Judge.

Based on the Record,

IT IS ORDERED AND ADJUDGED that this Action is DISMISSED, with prejudice. Because Defendant has not made a substantial showing of the denial of a constitutional right, a Certificate of Appealability is DENIED. *See* 28 U.S.C. § 2253(c)(2).

IT IS SO ORDERED.

DATED this 6 day of February, 2019.

Malcolm F. Marsh
Malcolm F. Marsh
United States District Judge

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

FILED

FEB 4 2021

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

v.

LAWRENCE DOBY WILSON, AKA Amin
A. Rashid,

Defendant-Appellant.

No. 19-35674

D.C. Nos. 3:13-cv-02099-MA
3:80-cr-00082-MA-1

District of Oregon,
Portland

ORDER

Before: McKEOWN, RAWLINSON, and FRIEDLAND, Circuit Judges.

The panel has voted to deny the petition for panel rehearing.

The full court has been advised of the petition for rehearing en banc and no judge has requested a vote on whether to rehear the matter en banc. *See* Fed. R. App. P. 35.

Wilson's petition for panel rehearing and petition for rehearing en banc (Docket Entry No. 22) are denied.

No further filings will be entertained in this closed case.

APPENDIX "C"

915 F.2d 1582

Unpublished Disposition

NOTICE: THIS IS AN UNPUBLISHED OPINION.
(The Court's decision is referenced in a "Table of Decisions Without Reported Opinions" appearing in the Federal Reporter. Use F1 CTA9 Rule 36-3 for rules regarding the citation of unpublished opinions.)

United States Court of Appeals, Ninth Circuit.

UNITED STATES of America, Plaintiff-Appellee,
v.

Lawrence D. WILSON, Defendant-Appellant.

No. 89-35841.

Submitted July 13, 1990.*

Decided Oct. 11, 1990.

Appeal from the United States District Court for the District of Oregon; James M. Burns, District Judge, Presiding.

Synopsis

D.Or.

AFFIRMED.

Procedural Posture(s): On Appeal.

MEMORANDUM **

Before FLETCHER, FERGUSON and FERNANDEZ,
Circuit Judges.

Opinion

*1 Lawrence Doby Wilson ("Wilson") appeals the district court's dismissal of his third and fourth 28 U.S.C. § 2255 petitions as successive. Wilson also challenges the court's denial of his motion for summary judgment. We affirm.

BACKGROUND FACTS

Wilson was involved in a financing scheme related to the purchase of the Aladdin Hotel in Las Vegas. As a result, Wilson was indicted for wire fraud, mail fraud, and interstate transportation of money taken by fraud. He pled not guilty

to all three charges. He was then provided court-appointed counsel to prepare a defense against the charges.

The first count, wire fraud, was dismissed by the government. A jury trial was then conducted on the remaining counts. The jury convicted Wilson on the third count, interstate transportation of money taken by fraud, and acquitted him on the second count, mail fraud. Wilson was sentenced to seven years. He appealed. We affirmed the sentence on appeal.

Wilson subsequently filed two section 2255 petitions on July 19, 1982 and March 8, 1983. On December 19 and 23, 1983, and January 18, 1984, evidentiary hearings were held on Wilson's petitions. On July 24, 1984, the magistrate issued a recommendation for dismissal of both petitions. On September 17, 1984, Wilson filed an untimely notice to reject the magistrate's findings and to appoint an impartial judge to review the entire record. On November 13, 1984, the district court adopted the findings of the magistrate and dismissed the petitions. On December 14, 1984, Wilson filed a notice of appeal. On June 8, 1987, we affirmed the dismissal of the petitions. The issues raised in those petitions were denial of access to grand jury ministerial records to prove irregularity in the jury selection process; ineffective assistance of appellate and trial counsel; unconstitutional enhancement of sentence based upon a prior Pennsylvania decision; denial of the right to review transcripts and negligent destruction of hearing exhibits; refusal of the court to subpoena the prosecutor because of lack of evidence that the prosecutor perjured herself at trial; and refusal of the judge to recuse himself for bias.

On December 21, 1987, Wilson filed a third section 2255 petition with the district court. On February 2, 1988, he filed a fourth petition with the District Court in the Southern District of New York.¹ These petitions were subsequently consolidated in the District of Oregon.

Wilson moved for summary judgment on the petitions on March 6, 1988. The government responded, objected to Wilson's filing of a summary judgment motion, and argued that the petitions should be dismissed as successive. The issues raised in these proceedings were: denial of access to grand jury ministerial records to prove irregularity in the jury selection process; ineffective assistance of appellate counsel; denial of the right to review transcripts; and use of perjured testimony of the prosecutor.

APPENDIX "D"

On June 9, 1988, the Magistrate recommended dismissal of both of Wilson's petitions. The district court adopted the Magistrate's findings, dismissed the petitions, and denied Wilson's motion for summary judgment. Wilson filed a timely notice of appeal.

JURISDICTION AND STANDARD OF REVIEW

*2 The district court had jurisdiction pursuant to 28 U.S.C. § 2255. We have jurisdiction pursuant to 28 U.S.C. §§ 1291 and 1294.

We review de novo the district court's denial of the section 2255 motion, *United States v. Angelone*, 894 F.2d 1129, 1130 (9th Cir.1990), and its denial of the motion for summary judgment. ¹ *West Coast Theatre Corp. v. City of Portland*, 897 F.2d 1519, 1525 (9th Cir.1990).

DISCUSSION

Wilson contends that the court improperly dismissed his petitions as successive. We disagree. A section 2255 motion is successive if: "1) the second motion presents the same ground determined adversely to the petitioner in the first, 2) the prior determination was on the merits, and 3) the ends of justice

would not be served by reaching the merits of the second motion." ² *United States v. Mathews*, 833 F.2d 161, 164-65 (9th Cir.1987) (quoting *United States v. Donn*, 661 F.2d 820, 823 (9th Cir.1981) (per curiam)).

In our review of the district court's dismissal of Wilson's prior petitions we considered the merits of all of Wilson's present claims and rejected those claims. Wilson has shown nothing to indicate that the interests of justice would be served by having us reexamine those issues. Wilson has already had a full opportunity to present his claims to the district court and to this court. No purpose other than harassment can be served by his repeated attempts to obtain a decision more congenial to his way of thinking. If he persists in that course of conduct, we will not hesitate to impose appropriate sanctions upon him. See 28 U.S.C. § 1912; Fed.R.App.P. 38.

Therefore, the district court properly dismissed these petitions as successive and denied Wilson's motion for summary judgment.

AFFIRMED.

All Citations

915 F.2d 1582 (Table), 1990 WL 152527

Footnotes

- * The panel finds this case appropriate for submission without oral argument pursuant to 9th Cir.R. 34-4 and Fed.R.App.P. 34(a).
- ** This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by 9th Cir.R. 36-3.
- 1 Although Wilson actually denominated these claims as claims of outrageous government conduct and denial of due process, they were, in substance, nothing more than a repeat performance of Wilson's claims in his first two petitions.

45 F.3d 438

Unpublished Disposition

NOTICE: THIS IS AN UNPUBLISHED OPINION.
(The Court's decision is referenced in a "Table of Decisions Without Reported Opinions" appearing in the Federal Reporter. Use F1 CTA9 Rule 36-3 for rules regarding the citation of unpublished opinions.)

United States Court of Appeals, Ninth Circuit.

UNITED STATES of America, Plaintiff-Appellee,
v.

Lawrence Doby WILSON, Defendant-Appellant.

No. 94-35312.

Submitted Dec. 19, 1994.*

Decided Dec. 28, 1994.

Appeal from the United States District Court, for the District of Oregon, D.C. Nos. CV-93-00988-JMB, CR-80-00082-JMB; James M. Burns, District Judge, Presiding.

Synopsis

D.Or.

AFFIRMED.

Procedural Posture(s): On Appeal.

Before: SNEED, D.W. NELSON and Trott, Circuit Judges.

MEMORANDUM**

*1 Lawrence Doby Wilson appeals the district court's denial of his fourth motion brought under 28 U.S.C. § 2255 challenging his convictions for wire fraud, mail fraud, and transporting fraudulently obtained money in interstate commerce. Wilson contends that (1) he was forced to trial in violation of the Speedy Trial Act less than 30 days after the filing of a superseding indictment; (2) appellate counsel was ineffective by failing to challenge the Speedy Trial Act violation in Wilson's direct appeal; and (3) he was not arraigned on the superseding indictment prior to trial. We have jurisdiction under 28 U.S.C. § 2255. We review de novo

the denial of a 28 U.S.C. § 2255 motion, *United States v. Roberts*, 5 F.3d 365, 368 (9th Cir.1993), and we affirm.

A claim of legal error, as opposed to a claim of jurisdictional or constitutional error, is not cognizable in a 28 U.S.C. § 2255 proceeding unless the error constitutes a fundamental defect which inherently results in a complete miscarriage of justice.

United States v. Addonizio, 442 U.S. 178, 185 (1979); *United States v. Wilcox*, 640 F.2d 970, 972-73 (9th Cir.1981). The Speedy Trial Act "does not require that the 30-day trial preparation period of [18 U.S.C.] § 3161(c)(2) be restarted upon the filing of a superseding indictment." *United States v. Karsseboom*, 881 F.2d 604, 607 (9th Cir.1989). The district court has discretion to grant a continuance if the filing of a superseding indictment prejudices a defendant. *United States v. Rojas-Contreras*, 474 U.S. 231, 234-37 (1985); see 18 U.S.C. 3161(h)(8).

Wilson fails to show either that he asked for a continuance or that prejudice resulted from the filing of the superseding indictment. Thus, bringing him to trial less than 30 days after the filing of the superseding indictment did not violate the Speedy Trial Act. See *Rojas-Contreras*, 474 U.S. 231, 234-37; *Karsseboom*, 881 F.2d at 607. Accordingly, Wilson has failed to present a cognizable claim under 28 U.S.C. § 2255. See *Addonizio*, 442 U.S. at 185; *Wilcox*, 640 F.2d at 972-73.

Because Wilson did not present his ineffective assistance of counsel claim in his section 2255 motion in the district court, we refuse to consider the claim on appeal. See *United States v. Keller*, 902 F.2d 1391, 1395 (9th Cir.1990); *Egger v. United States*, 509 F.2d 745, 749 (9th Cir.), cert. denied, 423 U.S. 842 (1975). Similarly, we do not address his contention that he was not properly arraigned because he failed to present this claim to the district court. See *United States v. Mondello*, 927 F.2d 1463, 1468 (9th Cir.1991).

AFFIRMED.

All Citations

45 F.3d 438 (Table), 1994 WL 721789

APPENDIX "E"

Footnotes

- * The panel unanimously finds this case suitable for decision without oral argument. Fed.R.App.P. 34(a); 9th Cir.R. 34-4.
- ** This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by 9th Cir.R. 36-3.

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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON

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UNITED STATES OF AMERICA,) CV No. 03-951-MA
Plaintiff,) CR No. 80-82-JMB
v.)
LAWRENCE DOBY WILSON,) ORDER
Defendant.)

Michael W. Mosman
United States Attorney
1000 S.W. Third Ave., Suite 600
Portland, OR 97204-2024

Attorneys for Plaintiff-Respondent

Lawrence Dobay Wilson
The Center for Constitutional and
Correctional Justice
Two Penn Center Plaza
Philadelphia, PA 19102

Defendant-Petitioner Pro Se

MARSH, Judge.

Defendant seeks to set aside a conviction he sustained on November 7, 1980 for transporting \$30,000 that he knew was obtained by fraud. On December 17, 1980, defendant was sentenced to 7 years. Defendant filed a direct appeal which was denied; defendant then filed a petition for habeas corpus relief pursuant to 28 U.S.C. § 2255 which was also denied by the district court and affirmed on appeal.

Defendant has fully served his federal sentence but seeks dismissal because he is currently serving a Pennsylvania state sentence that was enhanced based upon his prior federal

1 - ORDER

APPENDIX "F"

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1 conviction. Defendant has moved for a writ of error coram nobis
2 pursuant to 28 U.S.C. §1651. Liberally construing his petition,
3 defendant claims that his indictment was faulty because the
4 district court allowed the prosecuting attorney to alter the
5 indictment without seeking a formal superseding indictment before
6 a grand jury. Defendant also claims that the jury verdict was
7 inconsistent and cannot be allowed to stand.

8 Pursuant to the All Writs Act, 28 U.S.C. § 1651(a), coram
9 nobis relief is available to vacate a conviction for a petitioner
10 who has fully served his sentence, but suffers from the lingering
11 collateral consequences of an unconstitutional or unlawful
12 conviction. United States v. Walgren, 885 F.2d 1417, 1421, (9th
13 Cir. 1989). To obtain coram nobis relief, defendant must show:
14 "(1) a more usual remedy is not available; (2) valid reasons
15 exist for not attacking the conviction earlier; (3) adverse
16 consequences exist from the conviction sufficient to satisfy the
17 case or controversy requirement of Article III; and (4) the error
18 is of the most fundamental character." United States v. Montreal,
19 301 F.3d 1127, 1130 (9th Cir. 2002), cert. denied, 123 S. Ct.
20 1008 (2003). The writ is exceptional and provides relief to a
21 narrow category of otherwise closed cases that merit re-opening
22 to correct historical injustices. See e.g. United States v.
23 Hirabayashi, 828 F.2d 591 (9th Cir. 1987).

24 Based upon defendant's submissions, I will assume for
25 purposes of this order that he has established that no other
26 remedy is available and that he is suffering adverse consequences
27 from his 1980 federal conviction. However, defendant fails on
28 the second and fourth requirements for coram nobis relief: first,

1 he has in fact raised similar claims in his prior habeas
2 proceeding and they were rejected by the district court and the
3 Ninth Circuit Court of Appeals. Issues already raised and
4 rejected by the Circuit Court may not be relitigated in the
5 district court. See United States v. Hayes, 231 F.3d 1132, 1139
6 (9th Cir. 2000) (issues raised and rejected on direct appeal may
7 not form the basis for habeas relief). Second, defendant fails
8 to identify any "fundamental" error. He correctly notes that the
9 Ninth Circuit mischaracterized the nature of his underlying
10 conviction in its unpublished memorandum disposition affirming
11 the denial of habeas relief, but the court did directly address
12 and reject his claims regarding the validity of his indictment
13 and the timing of his trial on that indictment. To the extent
14 that his claims now may vary somewhat from whatever he may have
15 presented in that prior proceeding, they are simply variations on
16 the same theme. All of these arguments either have been or could
17 have been raised years ago and nothing in the petition justifies
18 the kind of extraordinary relief available under §1651.

19 Based upon the foregoing, defendant's petition for a writ
20 of error coram nobis (#152) is DENIED.

21 IT IS SO ORDERED.

22 DATED this 2nd day of August, 2003.

23
24 Malcolm F. Marsh

25 Malcolm F. Marsh
26 United States District Judge
27
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UNITED STATES DISTRICT COURT
DISTRICT OF OREGON

CRIMINAL MINUTES

Case No: Cr. 80-82; CV 03-951-MA

Proceeding Date: August 27, 2003

Case Title: USA v. LAWRENCE DOBY WILSON

Presiding Judge: Malcolm F. Marsh

Courtroom Deputy: Connie Armstrong

Reporter:

Tape No:

AUSA: Michael W. Mosman

DEFENDANT

COUNSEL

P=Present NP= Not Present

P=Present NP=Not Present

R=Released C=Custody

A=Apptd F=Fed Defender R=Retd

(1) LAWRENCE DOBY WILSON

(1) PRO SE

Location: NP - C

Presence-Type:

(2)

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Location:

Presence-Type:

(3)

(3)

Location:

Presence-Type:

(4)

(4)

Location:

Presence-Type:

NOTIFICATION:

counsel

Docket Entry:

Petitioner's Motion (#154) for Reconsideration is DENIED.

Document Number: 155
CRIMINAL MINUTES