ORIGINAL

20-8255
No.

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 2021

KENNETH DARNELL WILLIAMS
Petitioner(s),

V.

UNITED STATES OF AMERICA
Respondent(s).

ON PETITION FOR WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT

PETITION FOR A WRIT OF CERTIORARI

Kenneth Darnell Williams, Pro se
DIN# 12A4102
Shawangunk Corr. Facility
P.O. Box 700
Wallkill, New York 12589

QUESTIONS PRESENTED

A Petitioner seeking a Writ of Error Coram Nobis must show that (1) a more usual remedy is not available; (2) valid reasons exist for not attacking the conviction earlier; (3) adverse consequences exist from the conviction sufficient to satisfy the case or controversy requirement of Article III; and (4) the error is of the most fundamental character. This petition presents questions of jurisprudential significance involving the "more usual remedy," and actual innocence arguments being raised on writs of error coram nobis that have divided the circuits:

1. Whether a claim of actual innocence is cognizable on a writ of error coram nobis where new evidence of defendant's innocence is discovered after sentence is served, and whether a credible actual innocence claim on a writ of error coram nobis may allow a defendant to pursue his underlying constitutional claims on the merits notwithstanding the existence of a procedural bar to relief?

2. Whether a petition for a writ of error coram nobis is ineligible if the claim could have been raised on a **§ 2255 motion**, as five circuits hold, or a petition for a writ of error coram nobis is eligible as long as a more usual remedy is not available, as seven circuits hold, and whether ineffective assistance of counsel claims are a fundamental error that is cognizable on writ of error coram nobis?

PARTIES TO THE PROCEEDINGS

All parties to petitioner's Eleventh Circuit proceedings are named in the caption of the case before this Court.

LIST OF DIRECTLY RELATED CASES

None.

TABLE OF CONTENTS

TABLE OF CITATIONS

Cases

Statutes

PRAYER

Petitioner Kenneth D. Williams prays that a writ of certiorari be granted to review the judgement entered by the United States Court of Appeals for the Eleventh Circuit.

OPINIONS BELOW

The judgement of the United States Court of Appeals for the Eleventh Circuit affirming the District Court's Order is attached to this petition as Appendix 1. The Order of the Northern District of Georgia, Rome Division is attached to this petition as Appendix 2.

JURISDICTION

The Eleventh Circuit's judgement was entered on February 5, 2021. See Appendix 1. This petition is filed within 90 days after the denial of the Eleventh Circuit. This Court has jurisdiction under **28 U.S.C. § 1254(1)**.

CORPORATE DISCLOSURE STATEMENT

No publicly traded company or corporation has an interest in the outcome of this case or appeal.

Kenneth Darnell Williams

STATUTORY PROVISIONS INVOLVED

28 U.S.C.A § 1651. Writ of coram nobis
(a) In General

Subject to subsection (a), The Supreme Court and 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.

A writ of error coram nobis is available only to correct errors resulting in a complete miscarriage of justice, or under circumstances compelling such action to achieve justice defendant may seek a writ of coram nobis if he is no longer in custody and therefore ineligible for habeas corpus relief under **28 U.S.C.A. § 2255**. Although, the lower courts use varying standards for determining when a grant of the writ is appropriate. To obtain relief, petitioner must demonstrate that (1) a more usual remedy is not available; (2) valid reasons exist for not attacking the conviction earlier; (3) adverse consequences exist from the conviction sufficient to satisfy the case or controversy requirement of Article III; and (4) the error is of the most fundamental character, i.e. the error resulted in a complete miscarriage of justice.

ACTUAL INNOCENCE

A petitioner must support his or her claim of actual innocence of conviction with new and reliable evidence, and district courts must make the determination whether the evidence is reliable.

A petitioner must demonstrate that a reasonable jury viewing the new evidence in the context of all the evidence probably would not have found the petitioner guilty.

A habeas court must view the new evidence in light of all the evidence, including evidence not admitted or illegally admitted at trial.

A petitioner must show that it is more probable than not that a reasonable jury would have found the petitioner not guilty viewing the new evidence.

STATEMENT OF THE CASE

A. Petitioner's Writ of Coram Nobis 28 U.S.C.A § 1651.

In an indictment filed February 8, 2000, the Petitioner herein was charged with two counts of conspiracy to distribute narcotics, in violation of **21 U.S.C. § 846**. On June 27, 2000, Petitioner was acquitted by a jury of count one and convicted of count two. On August 28, 2000, Defendant-Appellant was sentenced to 72 months incarceration, followed by 6 years supervised release. No notice of appeal or appeal was filed on Petitioner's behalf. On August 10, 2010, Petitioner was discharged from supervised release by the District Court.

In 2012, Petitioner was convicted in Albany County, New York, and sentenced as a second felony offender to 42 years of imprisonment. Petitioner's New York State sentenced was enhanced because of the 2000 federal felony conviction in the Northern District of Georgia (NDGA). On April 16, 2018, petitioner filed a **28 U.S.C. § 2255** motion in the district court, challenging the 2000 NDGA conviction. The court denied the motion and the Eleventh Circuit Court of Appeals affirmed the district court's judgment on August 26, 2019.

Petitioner received new evidence in the form of affidavit's of his innocence from codefendant's in September 2019 and filed a motion for a writ of error coram

nobis, or alternatively, a writ of audita querela in December 2019, challenging the 2000 NDGA conviction. The district court denied the motion on January 30, 2020, and Petitioner timely filed a notice of appeal. On February 5, 2021 the Eleventh Circuit Court of Appeals affirmed the district court's denial of Petitioner's writ of error coram nobis.

REASONS FOR GRANTING THE WRIT

1. THE GOVERNMENT AND THE DISTRICT COURT FAILED TO ADDRESS THE MERITS OF PETITIONER'S ACTUAL INNOCENCE CLAIM ON THE WRIT OF ERROR CORAM NOBIS PETITION.

Several Federal Courts have addressed the merits of a petitioners actual innocence claim to examine if it negates a procedural default of a coram nobis petition. The court in ***U.S. v. Lynch, 807 F. Supp.2d 224, 229-230(E.D.Pa. 2011),*** applying ***Bousley v. U.S., 523 U.S. 614*** to a petition for a writ of error coram nobis stated, "Because [petitioners] raise claims that are procedurally defaulted and they cannot show cause and prejudice for their failure to appeal, their only means of obtaining relief is to show actual innocence of the charge." See ***Senyszyn v. United States*, No. 2:06-00311, 2016 WL 6662692 at *2, *3 (D.N.J. Nov 10, 2016)** ("Nonetheless, the Court will address the merits of Petitioner's motion because he asserts his actual innocence"). Also, see ***United States v. Gonzalez, Nos. 3-20136-***

01-KHV, 16-2286-KHV, 2016 WL 2989146 (D. Kan. May 24, 2016) (granting a writ of coram nobis where the defendant's prior conviction no longer qualified as a "predicate felony" and where he was actually innocent of the charge.) Defendant in *Gonzalez* did not appeal or file any motion to vacate his conviction under **28 U.S.C. § 2255**, served his sentence and was no longer in custody. The District of Kansas has also granted relief on several other coram nobis motions "based solely on the defendant's showing of actual innocence." See *Gonzalez, supra at Fn* ***5.** In fact, the court gave an extensive decision on the matter in *Gonzalez:*

> Finally, if defendant were still in federal custody, he would be entitled to equitable tolling of the statutory deadline under **Section 2255(f)(3)** based solely on a showing that he is actually innocent. Because defendant is no longer in custody and cannot obtain relief through a **Section 2255** motion, he should be able to seek comparable relief through the writ of coram nobis. See ***United States v. Peter, 310 F.3d 709, 712 (11th Cir. 2002)***(writ of error coram nobis acts as assurance that deserved relief will not be denied because of technical limitations of post-conviction remedies); ***Restrepo v. United States, No. 12-3517-JBS, 2012 WL 5471151, at *9 (D.N.J. Nov. 8, 2012)***(actual innocence constitutes extraordinary case that can negate procedural default of coram nobis petition); see also ***Rivas v. Fisher, 687 F.3d 514, 539-40 (2d Cir. 2012)***(claim of actual innocence falls under equitable exception to limitations period, permitting review of habeas petition notwithstanding otherwise unexcused delay in filing). But cf. ***Morgan***, **346**

> **U.S. at 512** (district court should consider writ of coram nobis where no other remedy available and "sound reasons" existed for failure to seek appropriate earlier relief); ***Robinson*, 597 Fed.Appx. at 552** (exercise of due diligence is procedural prerequisite to relief) ...

The Eleventh Circuit relying on its decision in ***United States v. Mills*, 221 F.3d 1201 (11th Cir. 2000)**("Relying on Mayer, we have held that allegations of newly discovered evidence are not cognizable in a petition for coram nobis"). This court and some others have ruled newly discovered evidence is not cognizable.

However, Courts routinely look to the totality of the record to determine whether a petitioner seeking a writ of error coram nobis has sufficiently shown actual innocence. See ***Marshall v. United States*, 368 F.Supp. 3d 674, 678 (S.D.N.Y. 2019)**; ***Serrano-Vargas v. United States*, No. 4:18-CV-04084-KES, 2018 WL 6815068, at *2 (D.S.D. Dec. 7, 2018)**; ***Dixon v. United States*, No 14-CV-1223 (JS), 2018 WL 910522, at *7 (E.D.N.Y. Feb. 14, 2018)**; ***United States v. Zavaliaroga*, No. 96-cr-00146-MMC-1, 2017 WL 6886193 at *1 (N.D.Cal. Sep. 22, 2017)**; and ***Bryan v. U.S.*, No. 2:10-CV-01196, 2012 WL 10067618 at *53 (S.D.W.Va. Mar. 15, 2012)** ("In the alternative, a petitioner who has procedurally defaulted can show that he is actually innocent").

Several Circuits have held that newly discovered evidence is never sufficient to warrant coram nobis relief, but others have not adopted such a categorical approach. See ***Hanan v. United States*, 402 F.Supp.2d 679, 685 (E.D. Va.2005).** The Fourth Circuit standard is, in order to obtain relief based on newly discovered evidence, a petitioner must show that no rational trier of fact could have found the petitioner guilty beyond a reasonable doubt had it been given access to the newly discovered evidence. (Citing ***Jackson v. Virginia*, 443 U.S. 307 (1979)); see also *Hunt v. McDade*, 205 F.3d 1333, 2000 WL 219755 at *2 (4th Cir.2000).**

The Second Circuit in ***du Purton v. United States*, 891 F.3d 437, 440 (2d Cir. 2018)** ruled that "claims of new evidence ... without constitutional or jurisdictional error in the underlying proceeding, cannot support a coram nobis."

The Third Circuit in ***United States v. Gaudelli*, 688 Fed.Appx. 115, 117 (3d Cir. 2017)** agreed with the Ninth Circuits holding, "coram nobis relief has been granted based upon extraordinary, newly discovered evidence, which could not have discovered through due diligence." ***Hirabayashi v. United States*, 828 F.2d 591 (9th Cir. 1987).**

The Fifth Circuit in ***United States v. Wickersham*, 61 Fed.Appx. 121 at *2,**

(5th Cir. 2003), "To warrant this extraordinary relief, the complained-of-error must work a complete miscarriage of justice." ***United States v. Bruno*, 903 F.2d 393, 396 (5th Cir. 1990).**

The Eighth Circuit in its decision ***Kandiel v. U.S.*, 964 F.2d 794, 796-97, Fn*1 (8th Cir.1992)** citing ***United States v. Morgan*, 346 U.S. 502, 511-12 (1954)** quoting ***United States v. Mayer*, 235 U.S. 55, 69 (1914)** indicated that coram nobis relief based on newly discovered evidence is available to challenge a conviction. This was after the government argued that the relief was not available for claims of newly discovered evidence on the writ.

The Tenth Circuit in its decision ***Klein v. U.S.*, 880 F.2d 250, 253-54 (10th Cir.1989),** went along with the Seventh Circuits holding in ***United States v. Scherer*, 673 F.2d 176, 178 (7th Cir.1982)** stating, "when claiming newly discovered evidence, the petitioner must show that due diligence on his part could not have revealed the evidence prior to trial and that the evidence would have likely led to a different result." See ***United States v. Addonizio*, 442 U.S. 178, 186(1979).**

The Eleventh Circuit citing ***United States v. Mayer*, 235 U.S. 55, 69 (1914),** held in ***United States v. Mills*, 221 F.3d 1201, 1204 (11th Cir. 2000),** "A court's

jurisdiction over coram nobis petitions is limited to the review of errors of the most fundamental character. ***Mayer*, 235 U.S. at 69, 35 S.Ct. 16.** Under ***Morgan*, 346 U.S. 502,** which defined the modern scope of the writ in federal court, newly discovered evidence is available to challenge a conviction on a writ.

A number of district and circuit courts have weighed that newly discovered evidence is cognizable on a coram nobis petition. A petitioner can either show cause for the default and prejudice, or that failure to consider the claims will result in a miscarriage of justice, i.e., the petitioner is actually innocent. See ***Coleman v. Thompson*, 501 U.S. 722, 748 (1991).**

2. THE DIVISION AMONG THE CIRCUITS OF WHETHER A PETITIONER IS BARRED FROM SEEKING CORAM NOBIS RELIEF BECAUSE HE COULD HAVE SOUGHT ALTERNATE RELIEF WHILE IN CUSTODY IS UNLIKELY TO BE RESOLVED ON ITS OWN, AND IS WORTHY OF THIS COURT'S ATTENTION.

In addition to failing to review petitioner's actual innocence claim on the merits, the court denied petitioner's ineffective assistance of counsel claim as "cognizable only in a timely **28 U.S.C. § 2255** motion."

Five Circuits have reached the conclusion that petitioner's are barred from coram nobis relief if the claim could have been raised on a **§ 2255** motion as

discussed in the Tenth Circuits thoughtful and comprehensive opinion in ***United States v. Miles***, **923 F.3d 798, 804 (10th Cir. 2019):**

> **It is a small, and wholly logical, step to expand this bar beyond previously available § 2255 motions to include all previously available post conviction avenues for relief. We have done so in a nonprecedential opinion. See *United States v. Tarango*, 670 F. App'x 981, 981 (10th Cir. 2016) (Gorsuch, J.) ("A writ of coram nobis may not be used to litigate issues that were or could have been raised on direct appeal or through collateral litigation, including a 28 U.S.C. § 2255 motion."). We now adopt that proposition here. Absent those traditional grounds that have excused successive or abusive habeas petitions, a petition for a writ of coram nobis must be rejected if the claim was raised or could have been raised on direct appeal, through a § 2255 motion, or in any other prior collateral attack on the conviction or sentence. Our view finds support in decisions from other circuits. See *United States v. Swindall*, 107 F.3d 831, 836 n.7 (11th Cir. 1997); *United States v. Camacho-Bordes*, 94 F.3d 1168, 1172-73 (8th Cir. 1996); *United States v. Bartlett*, Nos. 90-6345, 90-6351, 1990 WL 135645, at *1 n.* (4th Cir. Sept. 20, 1990). But see *United States v. Darnell*, 716 F.2d 479, 481 n.5 (7th Cir. 1983)...**

However, the court determined that a failure to raise a claim in an earlier petition may nonetheless be excused if you can show that a fundamental miscarriage of justice would result from a failure to entertain the claim.

Although, other circuits have reached that the writ should not be rejected, as

in ***U.S. v. Kwan*, 407 F.3d 1005, 1012 (9th Cir. 2005)**, which the Government argued that the petitioner's coram nobis petition should be denied because the petitioner could have filed a § 2255 motion while he was still in custody, but failed to do so. The court in ***Kwan*** denied and stated:

> Other courts have not interpreted this threshold requirement as the government would have us do. See, e.g., ***United States v. Morgan*, 346 U.S. 502, 512, 74 S.Ct. 247, 98 L.Ed. 248 (1954)** (finding petitioner met threshold requirement for coram nobis relief even though petitioner could have raised denial of counsel claim by filing § 2255 motion while incarcerated); ***United States v. Esogbue*, 357 F.3d 532, 534 (5th Cir.2004)** (same).
>
> Moreover, the government's argument asks us to adopt a subtle change in the language of the threshold requirement (from "is unavailable" to "was unavailable"). If the mere fact that a coram nobis petitioner could have raised his claim while in custody was sufficient to bar coram nobis eligibility, then there would be no need for the second coram nobis requirement, which requires the petitioner to establish that "valid reasons exist for not attacking the conviction earlier." Taken together, the first and second requirements make clear that a petition is not barred from seeking coram nobis relief simply because he could have sought relief while in custody. Instead, he is given the opportunity to explain why he did not seek relief while in custody, and he is only barred from coram nobis eligibility if he fails to show that he had valid reasons for delaying.

This Court in its reasoning of ***Strickland v. Washington*, 466 U.S. 668 (1984)** in ***Chaidez v. U.S.*, 568 U.S. 342, 348 (2013)** stated:

> In ***Strickland***, we held that legal representation violates the Sixth Amendment if it falls below an objective standard of reasonableness, as indicated by prevailing professional norms, and the defendant suffers prejudice as a result. ***Id.*, at 687, 104 S.Ct 2052.** That standard, we concluded, provides sufficient guidance for resolving virtually all claims of ineffective assistance, even though their particular circumstances will differ. ***Williams*, 529 U.S., at 391, 120 S.Ct. 1495.** And so we have granted relief under ***Strickland*** in diverse contexts..

The First Circuit in ***Williams v. United* States, 858 F.3d 708, 712 (1st Cir. 2000)** states,

> To be sure, such constitutionally deficient representation, if true, can function as the rock upon which petitioner can build her coram nobis church. See ***United States* v. *Castro-Taveras*, 841 F.3d 34, 36-37, 52-53 (1st Cir. 2016)**(allowing a defendant to premise his coram nobis petition on a Sixth Amendment ineffective-assistance-of-counsel claim); ***Murray* v. *United States*, 704 F.3d 23, 28 (1st Cir. 2013)**(noting that writs of coram nobis are "meant to correct errors 'of the most fundamental character; that is, such as render[] the proceeding itself irregular and invalid' " (alteration in original)(emphasis added)(quoting ***United States* v. *Mayer*, 235 U.S. 55, 69, 35 S.Ct 16, 59 L.Ed. 129 (1914))).

In addition, **U.S. *v. Torres-Otero*, 232 F.3d 24, 31-32(1st Cir. 2000)**, found that petitioner had met the "exacting standard" for issuance of a writ of coram nobis vacated petitioner's judgment only to reimpose the same sentence and allow defendant to file an appeal within appropriate time period from date of reimpose.

The Second Circuit in ***Marshall v. United States*, 807 Fed.Appx. 56, 58 (2d Cir. 2020)**("[I]neffective assistance of counsel is one ground for granting a writ of coram nobis.") ***Kovacs v. United States*, 744 F.3d 44, 49 (2d Cir. 2014).** In addition, the court reviewed petitioner's actual innocence claim and found that "[petitioner's] ineffectiveness argument necessarily Fail[ed] because [petitioner] was not actually innocent ..."

The Third Circuit in ***Thai v. United States*, 813 Fed.Appx.73, 74 (3d Cir. 2020)**(Coram nobis lets petitioner who is not in custody challenge his conviction for fundamental defects, including ineffective assistance of counsel.") ***United States v. Rad-O-Lite of Phila., Inc.*, 612 F.2d 740, 744 (3d Cir. 1979).**

The Sixth Circuit in ***Pilla v. U.S.*, 668 F.3d 368, 372 (6th Cir. 2012)**("Coram nobis is an extraordinary writ that may be used to vacate a federal sentence or conviction when a [28 U.S.C] § 2255 motion is unavailable-generally,

when the petitioner has served his sentence completely and thus is no longer in custody "). However, the Sixth Circuit in another opinion in ***United States v. Castano,* 906 F.3d 458, 464 (6th Cir. 2018)** states:

> Finally, coram nobis relief is generally not appropriate for claims that could have been raised on direct appeal. When the Supreme Court reaffirmed the availability of coram nobis in **Morgan**, it held that a court must hear a coram nobis petition if "sound reasons exist [] for failure to seek appropriate earlier relief." **346 U.S. at 512, 74 S.Ct. 247.** This holding is grounded in common-law history of the writ: "Claims that could have been raised by direct appeal are outside the scope of the writ." **Keane, 852 F.2d at 202** (quoting **United States v. Mayer, 235 U.S. 55, 69, 35 S.Ct 16, 59 L.Ed. 129 (1914)).** Later courts have followed this rule. See **United States v. Osser, 864 F.2d 1056, 1062 (3rd Cir. 1988)** ("The issue that Osser brings at this late date should have been included in his direct appeal."); **United States v. Richard, 2000 WL 875369, at *2 (6th Cir. Jun. 19, 2000)**("Arguments that could have been raised on direct appeal are not properly brought in a coram nobis petition, which must be based on matters not appearing in the record."). This general rule, however, remains subject to the ultimate question of coram nobis, that is, whether granting the writ is necessary to achieve justice.

The Circuit in the District of Columbia in ***U. S. v. Newman,* 805 F.3d 1143, 1146 (D.D.C. 2015)**("A petition for a writ of coram nobis provides a way to collaterally attack a criminal conviction for a person ... who is no longer 'in

custody' and therefore cannot seek habeas relief under **28 U.S.C. § 2255** or **§ 2241.**"). ***Chaidez v. United States,* 133 S.Ct. 1103, 1106 n. 1.**

Petitioner's case presents issues similar to ***Garza v. Idaho,* 139 S.Ct. 738 (2019)**: ***Lee v. U.S.,* 137 S.Ct. 1958 (2017)**; and ***Roe v. Flores-Ortega,* 528 U.S. 470 (2000)** where "counsel's deficient performance arguably led not to a judicial proceeding of disputed reliability, but rather to the forfeiture of a proceeding itself." ***Flores-Ortega,* 528 U.S., at 483, 120 S.Ct. 1029**. Where this Court considered "whether the defendant was prejudice by the "denial of the entire judicial proceedings ... to which he had a right." **Id at 482-483, 120 S.Ct. 1029.**

A vital choice based on a misconception of law or fact, can amount to ineffective assistance. "An attorneys' ignorance of a point of law that is fundamental to his case combined with his failure to perform basic research on that point is a quintessential example of unreasonable performance under ***Strickland***." ***Hinton v. Alabama,* 571 U.S., 263, 274 (2014)**. This principle applies with equal force to appeals, and if a lawyer has been instructed to appeal and inadvertently fails to do so, he has acted "in a manner that is professionally unreasonable" under the Sixth Amendment. ***Flores-Ortega,* 528 U.S. at 477, 120 S.Ct. 1029.**

And, as the court held in ***Arrastia v. United States*, 455 F.2d 736, 739 (5th Cir. 1972)**, which is before October 1, 1981, and constitutes binding precedent in the Eleventh Circuit, the right to appeal a criminal case is fundamental. Ineffective assistance is a fundamental error. See ***United States v. Castro*, 26 F.3d 557, 559 (5th Cir. 1994).** However, the Eleventh Circuit has "not decided [whether][an] ineffective assistance of counsel [claim] may constitute an error so fundamental as to warrant coram nobis relief." See ***Gonzalez v. United States*, 981 F.3d 845, 851 (11th Cir. 2020).** This Court in ***Morgan*** found that a writ of coram nobis can issue to redress a fundamental error that involves a deprivation of counsel in violation of the Sixth Amendment.

As the above decisions demonstrate, the Eleventh, Tenth, Eighth, Seventh, and Fourth Circuits rely on the precedent that "a writ of coram nobis may not be used to litigate issues that were or could have been raised on direct appeal or through collateral litigation, including a **28 U.S.C. § 2255** motion."

However, the above decisions in the First, Second, Third, Fifth, Sixth, Ninth, and District of Columbia Circuit demonstrate these circuits are following the precedent set by this Court in ***United States v. Morgan*, 346 U.S. 502, 512, 74**

S.Ct. 247, 98 L.Ed. 248 (1954)(finding petitioner met threshold requirement for coram nobis relief even though petitioner could have raised denial of counsel claim by filing § 2255 motion while incarcerated).

Whether a claim of actual innocence is cognizable on a coram nobis petition, and/or whether the actual innocence claim on a coram nobis may allow a court to review a petitioners' underlying constitutional claim on the merits; whether a petitioner may pursue his claims on a coram nobis petition despite not having raised those claims on a § 2255 motion; and whether ineffective assistance of counsel claims are a fundamental error that are cognizable on writ of error coram nobis are questions with enormous consequences.

As petitioners' claims are weighed thoughtfully and thoroughly in 7 circuits, but are dismissed without being properly weighed and considered in 5 circuits. This split amongst the circuits presents an unfair legal barrier that petitioners' have to overcome to permit review. If all the circuits barred coram nobis eligibility because petitioners' could have or should have raised the claim while in custody, then there would be no need for the other requirements. As the Ninth Circuit has stated in its decision, "Taken together, the first and second requirements make clear that a petition is not barred from seeking coram nobis relief simply because he could

have sought relief while in custody." ***Kwan 407 F.3d at 1012.***

Given this Court has granted certiorari on issues of counsels' deficient performance when counsel has not filed a notice of appeal and/or an appeal in cases on ***§ 2254 and § 2255 motions,*** the issue raised in this case is worthy of this Court's attention on whether a coram nobis petition should be granted when "counsel's deficient performance has deprived a petitioner of more than a fair judicial proceeding." ***Flores-Ortega at 483.*** Accordingly, the Court should grant petitioner's petition for certiorari to resolve the entrenched circuit conflicts.

CONCLUSION

The petition for a writ of certiorari should be granted.

Date: April 23, 2021

Respectfully submitted,

Kenneth Darnell Williams, Pro se

DIN# 12A4102

Shawangunk Corr. Facility

P.O. Box 700

Wallkill, New York 12589