

APPENDIX A

United States Court of Appeals
for the Fifth Circuit

No. 21-60550

UNITED STATES OF AMERICA,
Plaintiff- Appellee,

Versus

TERRANCE CARVELL GUINN,
Defendant-Appealant

Appeal from the United States District Court for the
Southern District of Mississippi
USDC No. 5:99-CR-8-1

Before DAVIS, WILLETT, and OLDHAM,
Circuit Judges.

PER CURIAM: *

Terrance Carvell Guinn pleaded guilty in 1999 to one count of possession of a firearm by a convicted felon in violation of 18 U.S.C. § 922(g)(1). The predicate felony was Guinn's 1997 Louisiana

* Pursuant to 5TH CIRCUIT RULE 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIRCUIT RULE 47.5.4.

conviction for possession of a controlled substance with intent to distribute. As part of his plea agreement, Guinn waived the right to contest the conviction or sentence. In 2020, after Guinn had fully discharged his federal sentence, the State of Louisiana expunged his 1997 drug conviction. Guinn initiated this postconviction proceeding shortly thereafter, seeking a writ of audita querela vacating his federal conviction based on the expungement of the predicate felony. He wanted his § 922(g)(1) conviction set aside so that he could obtain occupational and professional licenses through the Securities and Exchange Commission.

The district court denied relief, holding that the collateral review waiver incorporated into Guinn's plea agreement precluded his challenge and that, even absent a waiver, Guinn would not be entitled to relief on the merits because the expungement did not invalidate his federal felon-in-possession conviction. Guinn then filed a motion for reconsideration under FED. R. Civ. P. 59(e), repeating his earlier arguments for postconviction relief. The district court denied the motion.

Guinn appeals the district court's denials of his petition for a writ of audita querela and motion for reconsideration. The government, for its part, moves to dismiss the appeal or, alternatively, for summary affirmance. For the reasons explained below, we hold that this action is barred by Guinn's collateral-review waiver and DISMISS the appeal.

Guinn seeks postconviction relief in the form of a writ of audita querela. This common-law procedural device is used to challenge an initially valid judgment that has become invalid due to a legal defect that arose after its rendition. *See United States v. Miller*, 599 F.3d 484, 487 (5th Cir. 2010). While the writ of audita querela has been expressly abolished in civil cases, we have "acknowledged, with some reservation, that the writ ... might ... survive in criminal adjudications, if there is a gap for it to fill." *Id.* at 488.

We need not decide whether the writ is generally available in criminal cases, however, because we conclude that Guinn's waiver of his right to seek postconviction relief bars his present action seeking audita querela relief. Guinn, as part of his plea agreement, "expressly waive[d] the right to contest the conviction and/or sentence or the manner in which the conviction was imposed in any post-conviction proceeding, including but not limited to a motion brought under § 2255, Title 28, United States Code" A collateral-review waiver of this type is enforceable if it "was knowing and voluntary," and "applies to the circumstances at hand, based on the plain language of the agreement." *United States v. Barnes*, 953 F.3d 383, 386 (5th Cir. 2020) (quoting *United States v. Kelly*, 915 F.3d 344, 348 (5th Cir. 2019)).

Guinn does not deny that he knowingly and voluntarily waived his right to seek postconviction relief. Instead, he argues that the waiver does not bar this postconviction proceeding. We disagree.

Guinn seeks a writ of audita querela setting aside his 1999 conviction. In doing so, he is _inarguably attempting to ('contest [that] conviction . . . in a post-conviction proceeding" -which, by the plain language of his plea agreement, he surrendered the right to do. See *Dong Qj Ming v. United States*, 2013 WL) 2397674, at *5 (S.D.N.Y. May 31, 2013) (collateral-review waiver barred challenge to conviction via writ of audita querela).

Indeed, we held in an earlier case that Guinn's plea agreement barred an attempt to challenge his conviction via the writ of coram nobis. See *United States v. Guinn*, 310 F. App'x 693, 694 (5th Cir. 2009). We see no reason why the same waiver would not also bar a similar challenge by way of a writ of audita querela. Moreover, Guinn's waiver is enforceable even though he seeks to set aside his conviction based on a legal development (expungement of his predicate conviction) that occurred after he waived his right to seek postconviction relief. See *United States v. Burns*, 433 F.3d 442, 446-51 (5th Cir. 2005).

Finally, Guinn argues that even if his collateral-review waiver is valid and bars his petition for a writ of audita querela, we should decline to enforce the waiver because doing so would result in a miscarriage of justice. While some circuits have recognized a miscarriage-of-justice exception to the enforceability of collateral-review waivers, see, e.g., *United States v. Cudjoe*, 634 F.3d 1163, 1167 (10th Cir. 2011), this court has thus far "declined explicitly either to adopt or to reject it," *Barnes*, 953

F.3d at 389. We need not determine the validity of such an exception here because Guinn's briefing of the issue, which consists of some conclusory statements that enforcing the waiver would result in a miscarriage of justice, is plainly inadequate, in that he does not "explain the proper scope of th[e] exception, ... cite any cases purporting to do so, or ... detail how and why it should apply to his case." *Id.* "By only briefly alluding to that theory," Guinn has forfeited "any contention that [the miscarriage-of-justice] exception applies." *Id.*

Because Guinn waived his right to bring this postconviction challenge, this appeal is DISMISSED.

February 4, 2022

APPENDIX B

United States District Court
Southern District of Mississippi
Western Division

USA

Plaintiff.

v.

Criminal Action No 5:99-cr-8-1

Terrance Guinn

Defendant.

ORDER

This Matter is before the Court on Terrance Guinn's Motion for Writ of Audita Querla [ECF No. 66] and Motion for Notice of Hearing [ECF No. 67]. After carefully considering the motions, the applicable law, and being fully advised in the premises, the Court finds as follow:

Background

Guinn ("Defendant") was originally sentenced by this Court on August 16, 1999, after pleading guilty to a violation of 18 U.S.C § 922(g)(1), Possession of a Firearm by a Convicted Felon. He was sentenced to thirty (30) months imprisonment, to be followed by a two (2) year term of supervised release. Guinn again appeared before this Court August 3, 2004 and pleaded guilty to the violations of his supervised release alleged in a Petition for Summons filed November 21, 2003. He was

sentenced to time served (196 days) with 12-month term of reimposed supervised release. He again appeared before the Court on August 8, 2005, for a revocation hearing based on allegations that he had violated his conditions of supervised release as stipulated in a Petition for Warrant filed on June 28, 2005.

On August 19, 2005 the Court found the Defendant not guilty of the alleged violations and, since Guinn original date of termination of supervised release was August 2, 2005, ordered the Defendant immediately terminated from supervise release.

On July 24, 2007, Defendant filed for Writ of Error Coram Nobis [ECF No. 55]; two days later he filed a Motion to Amend Motion for Writ of Error of Coram Nobis [ECF No. 57]. This Court denied the amended motion. [ECF No. 59]. Inasmuch as Guinn had waived his right to pursue post-conviction challenges to his conviction because he pleaded guilty, the Court found that his motion was untimely, and that he failed to show 18 U.S.C. § 922(g)(1) is unconstitutionally vague. *Id.* On appeal, the Fifth Circuit agreed that Guinn waived his right to pursue post-conviction relief. [ECF No. 64]. The Fifth Circuit further found that Guinn had presented a frivolous issue and dismissed the appeal. *Id.*

The State of Louisiana recently expunged Guinn's 1997 conviction of possession of marijuana with the intent to distribute. [ECF No. 66]. It was

this 1997 conviction that led to Guinn's status as a felon. Id. Guinn now seeks a writ of audita querela and request the Court to vacate or set aside his conviction pursuant to the All-Writs Act, 28 U.S.C. § 1651¹.

Analysis

A writ of audita querela is a common law writ which constitutes the initial process in an action brought by a judgment defendant on the ground that some defense or discharge has arisen since its rendition. *United States v. Reyes*, 945 F. 2d 862, 863 n.1 (5th Cir. 1991). "Audita querela is directed against the enforcement, or further enforcement, of a judgment which, when rendered, was just and unimpeachable." *United States v. Miller*, 599 F. 3d 484, 487 (5th Cir. 2010) citing 7A C.J.S. Audita Querela § 4 (2004).

Guinn seeks to have his 1999 conviction vacated because the state of Louisiana recently expunged his 1997 conviction that established his status as a felon. See La. Cr. C PR Art. 971, et seq. When Defendant pleaded guilty, he waived his right to pursue post-conviction challenges to his conviction, he is procedurally barred from

¹ (a) The Supreme Court and all courts established by Act of Congress may issue all writs necessary or appropriate in aid of their respective jurisdiction and agreeable to the usages and principles of law.

(b) An alternative writ rule nisi may be issue by justice or judge of a Court which has jurisdiction.

pursuing the instant petition for writ of audita querela. See *Mata-Soto v. U.S.*, 558 Fed. Appx 844 (10th Cir. 2014); *U.S. v. Masilotti*, 965 F. Supp. 2d 1380 (S.D. Fla. 2013), *aff'd*, 565 Fed. Appx. 837 (11th Cir. 2014), *cert. denied*, 135 S. Ct. 983, 190 L. Ed. 2d 836 (2015); *U.S. v. Bastien*, 111 F. Supp. 3d 315 (E.D. N.Y. 2015).

Louisiana law provides for the expungement of certain arrest and conviction records under limited circumstances. However, expungement merely removes the record from public access; it does not result in the destruction of the record. See La. Cr. C. Pr Art. 971. Louisiana's criminal Code of Procedure states:

[n]othing in the Title shall be construed to limit or impair in any way the subsequent use of any lawful manner by law enforcement, law enforcement agencies, prosecutors, or judges, including its use as a predicate offense.... *Id.* Even though the Defendant's state court conviction has been expunged, it still can be used as a predicate offense.

Thus, Defendant's expunged state conviction has no bearing on his conviction in this Court.

Additionally, Defendant argues that the expungement of his conviction in Louisiana by the Court that entered the conviction entitles the petitioner to relief from his conviction in the state of Mississippi. [ECF No.66]. Petitioner's state conviction was expunged; Louisiana did not expunge his federal conviction.

Inasmuch as the Defendant has waived his right to seek post-conviction relief and Louisiana's law provides that an expunged conviction can serve as a predicate offense, the Court finds that a hearing on the motion is futile. For the foregoing reasons, the Court finds that Defendant is not entitled to any of the relief he seeks.

Accordingly, IT IS HEREBY ORDERED that Defendant's Motion for Audita Querla [ECF No.66] is here by Denied.

IT IS FURTHER ORDERED that Defendant's Motion for Notice of Hearing [ECF No. 67] is hereby Denied.

SO ordered this the 31st day of March, 2021.

/s/ David Bramlette
United States District Judge

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APPENDIX C

DEPARTMENT OF PUBLIC SAFETY AND
CORRECTIONS
DIVISION OF PROBATION AND PAROLE
BATON ROUGE, LOUISIANA
DATE: 12/11/08
LETTERFOP

VERIFICATION OF FIRST OFFENDER PARDON

TERRANCE C GUINN
Race/Sex: B/M
110 ROYAL STREET
DOB: 09/14/73
PORT GIBSON, MS 39150
SID# 001724774

DOC# 00388976
DOCKET#: LIN 42042

To Whom It May Concern:

It appearing to Louisiana Department of Public
Safety and Corrections, Division of Probation and
Parole, that TERRANCE C GUINN was sentenced
by the Honorable JAMES BODDIE, Judge of the
3RD JUDICIAL DISTRICT Court, Parish of
LINCOLN, State of Louisiana, under the above
listed docket number (s) for the crime (s) of:
SCHEDULE I: HALLUCINOGENIC SUB POSS.
WITD MARIJUANA.

And it further appearing that defendant has completed this sentence and meets all of the requirements for an automatic first offender pardon, as outlined in R.S. 15:572. Now, therefore, as provided by Article 1, Section 20, and Article 4, Section 5(E) (1), of the Louisiana Constitution, this will certify that effective FEBRUARY 8, 2005, TERRANCE GUINN has discharged his/her sentence for the above stated offense(s) and that all rights of citizenship and franchise are restored in Louisiana.

The right to receive, possess or transport a firearm may not be restored unless all legal provisions are met and should be determined through the local law enforcement agency. Similarly, this pardon does not constitute a waiver of any unpaid fines and fees, due and owing, which may be enforced by the Court.

Eugenie C. Powers
Probation and Parole Director

Arlena McDonald
District Director

APPENDIX D

State Of Louisiana
Department of Public Safety and Corrections
Public Safety Service

September 03, 2020

Re: *State of Louisiana v. Terrance Carvell Guinn*
No: 42042

Certificate of Compliance with La C.CR.P. Art. 971, et seq. As occasioned by the Honorable Judge in the above captioned case and in compliance with La C.Cr.P. Art. 971, et seq. all records on file with the Louisiana State Police Criminal Identification and Information, as they relate to the arrest of:

Terrance Guinn on 01/31/1997 by Lincoln Parish Detention Center for possession of marijuana with the intent and LA-DOC P&P Ouchita Probation for possession of marijuana with intent to distribute.

Have been expunged and will be disclosed on a confidential basis to any persons or agency entitled to such Information pursuant to La. C. Cr. P. Art. 971.et.seq. The FBI has been notified of this action.

Lieutenant Lanica M. Kennedy, Deputy Director
Bureau of Criminal Identification and Information
Louisiana State Police.

Displaying title 18, up to date of 2/24/2022. Title 18 was last amended 2/15/2022. There have been

APPENDIX E

TITLE 18 CONSERVATION OF POWER AND WATER

CHAPTER I—FEDERAL ENERGY REGULATORY COMMISSION, DEPARTMENT OF ENERGY

Chapter I, Federal Energy Regulatory
Commission,.....1 -399

Department of Energy

'Chapter III, Delaware River Basin
Commission.....400 - 499

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Chapter VI, Water Resources Council.....700 - 799

Part 700 {Reserved]

Part 701, Council Organization.....701.1 - 701.314

Part 704, Plan Formulation Standards and.....704.39

Procedures

Part 705, Nondiscrimination in Federally
Assisted.....705.1 - 705.12

Programs - Effectuation of Title VI of the Civil Rights Act of 1964

Part 706, Employee Responsibilities and
Conduct.....706.101 - 706.413

Part 707, Compliance with the
National.....707.1 - 707.11

Environmental Policy Act (NEPA)

Part 708 Upper Mississippi River Basin
Commission:.....708.1 - 708.5

**Public Participation in Upper Mississippi
River System Master Plan**

Part 725, Implementation of Executive Orders
11988,.....725.0 - 725.9

**Floodplain Management and 11990, Protection
of Wetlands**

Part 740, State Water Management
Planning.....740.1 - 740.13

Program

Parts 741-799 [Reserved]

Chapter VIII, Susquehanna River Basin Commission

Part 800 [Reserved]

Part 801 General Policies

Parts 803-805 [Reserved]

Part 806, Review and Approval of
Projects.....806.1-806.45

Part 807, Water Withdrawal

Registration.....807.1-807.5

Part 808, Hearings and Enforcement

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Parts 809-899 {Reserved}