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United States Court of Appeals
For the First Circuit

No. 19-2179

ANTONIO MEDINA PUERTA,

Petitioner - Appellant,

v.

UNITED STATES,

Respondent - Appellee.

Before

Lynch, Selya and Kayatta,
Circuit Judges.

JUDGMENT

Entered: December 9, 2020

Petitioner-Appellant Antonio Medina Puerta appeals from the district court's denial of his petition for a writ of coram nobis, through which Petitioner-Appellant sought vacatur of his 1993 conviction for bank fraud under 18 U.S.C. § 1344. After plenary review, we conclude that the denial of coram nobis relief was appropriate for substantially the same reasons set forth by the district court. See United States v. George, 676 F.3d 249, 256 (1st Cir. 2012) (standard of review and tripartite test for coram nobis relief). The judgment of the district court is **AFFIRMED**.

By the Court:

Maria R. Hamilton, Clerk

cc:
Antonio Medina Puerta
Lori J. Holik
Donald Campbell Lockhart
Evan J. Gotlob

APPENDIX 1

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

UNITED STATES OF AMERICA,	)	
	)	
v.	)	1:15-cv-14257-MLW
	)	
ANTONIO MEDINA PUERTA, Defendant.	)	

MEMORANDUM AND ORDER

WOLF, D.J. September 10, 2019

I. INTRODUCTION

On October 18, 1993, defendant Antonio Medina Puerta ("Medina") was convicted of bank fraud, in violation of 18 U.S.C. §1344, and foreign transportation of stolen money, in violation of 18 U.S.C. §2314, after a nine-day jury trial in which Judge Robert Keeton presided. See Cr. No. 91-10258-MLW-1. The First Circuit affirmed the conviction. See United States v. Puerta, 38 F.3d 34, 36 (1st Cir. 1994).

Following his unsuccessful appeal, Medina filed a series of post-conviction motions which were denied. See Cr. No. 91-10258-MLW-1 (Docket Nos. 172, 176-77, 184, 193-95, 199, 200-01, 203-07); United States v. Medina, Nos. 95-1381, 95-1941 (1st Cir. June 5, 1996) (unpublished) (per curiam). On July 25, 2011, Medina filed a petition for writ of coram nobis, contending that the Supreme Court's decision in Neder v. United States, 527 U.S. 1 (1999), invalidated his bank fraud conviction. See Petition, 11-cv-11323-

APPENDIX 2

RGS (Docket No. 1). On January 4, 2013, Judge Richard Stearns dismissed this petition, finding that the rule in Neder was not made retroactive. See 11-cv-11323 (Docket No. 11).

On December 24, 2015, Medina filed the instant "Petition and Motion for Writ of Coram Nobis, and Request for Appointment of Counsel and Further Briefing; Request for Judicial Notice" (the "Petition"). See Docket No. 1. He contends that his judgment must be vacated and the indictment dismissed because under the Supreme Court's decision in Loughrin v. United States, 134 S. Ct. 2384 (2014), the indictment fails to allege the crime of bank fraud under 18 U.S.C. §1344. Id. at 1. In particular, Medina argues that under Loughrin, bank fraud requires not only a "material" falsehood, but also a "relational connection between the alleged false statements or representations and the obtaining of bank property." Id. at 4. Medina states that he had no opportunity previously to raise this issue because he was not alerted to it until he read Loughrin in 2015. Id. at 1. He claims Loughrin is retroactive for the purposes of coram nobis review. Id. at 14-15. With the Petition, Medina also requested appointment of counsel and filed a motion for leave to proceed in forma pauperis.

On June 24, 2016, this court issued an order addressing various aspects of the Petition. See Docket No. 8. In particular, the court held that the Petition would be construed only as a petition for coram nobis and not as a petition for habeas corpus

or audita querela; determined that the motion to proceed in forma pauperis was moot because no filing fee is required for the Petition; and denied the request to appoint counsel without prejudice to renewal after the respondent filed its response. Id. at 3.[1] The court also ordered that the respondent file an answer. Id. at 4. The government filed an opposition to the Petition. See Docket No. 12.

For the reasons explained in this Memorandum, the Petition is being denied.

II. FACTUAL BACKGROUND

As summarized by the First Circuit, the pertinent facts are as follows. In November 1986, Medina, then a research associate at a Boston non-profit research organization and originally from Spain, deposited a check in his account in the branch of the Bank of Boston, where he did his banking. See Puerta, 38 F.3d at 36-37. The check was a bank check prepared by the Banco Central of Spain, dated October 30, 1986. The written amount on the check, translated into English, was "three hundred and sixty-five dollars," and the numeric representation on the check was "USD 365,ooo." Id. When he went to deposit the check at the Bank of Boston on November 3, 1986, Medina stated on the deposit slip that the check was for $365,000. Id. at 37. On November 5, 2016, he

[1] Medina has not renewed his request for appointment of counsel.

returned to the bank to request that $350,000 be wired from his account to an account in England. Id. The bank representative informed Medina that she first needed to verify that the check had been collected. Id. The following day the representative told Medina that the check had been returned and the credit deleted from his account. Id. On that day, Banco Central informed the Bank of Boston that the check was meant to be for $365. Id.

On November 7, 1986, Medina redeposited the signed check with a deposit slip stating that it was in the amount of $365,000. Id. He received a credit in his account for $365,000. Medina's account otherwise had a balance of about $3,000. Id.

On November 12, 1986, Medina returned to the bank and signed a wire transfer order directing the bank to transfer $350,000 from his account to an account in his name at Lloyd's Bank in England. Id. Later that day, the funds were wired to England. Id. The error was discovered about two weeks later. Id.

At his trial, Medina contended that the deposit of $365,000, rather than $365, was the result of an innocent misunderstanding regarding the amount stated on the check, which he believed was payment in connection with a research grant. Id. The jury was not persuaded and found Medina guilty. Id. In his appeal, Medina contended, among other things, that the Bank of Boston was not defrauded because Banco Central had informed it prior to the

November 7, 1986 deposit that the check was, in fact, for $365. Id. at 41.

III. LEGAL STANDARDS

A court considering a coram nobis petition presumes that the original proceedings were valid. See United States v. Morgan, 346 U.S. 502, 512 (1954). The burden to prove otherwise is on the petitioner and is a heavy one. Id. In the First Circuit, for a coram nobis petitioner to succeed, he must "explain[] his failure to seek relief from judgment earlier, show that he continues to suffer significant collateral consequences from the judgment, and demonstrate that the judgment resulted from an error of the most fundamental character." Woodward v. United States, 905 F.3d 40, 43 (1st Cir. 2018) (quoting United States v. George, 676 F.3d 249, 254 (1st Cir. 2012)); see also Hager v. United States, 993 F.2d 4, 5 (1st Cir. 1993); United States v. Morgan, 346 U.S. 502, 512 (1954).

With respect to the third criterion, the Supreme Court has elaborated that "fundamental errors" are those that "rendered the proceeding itself irregular and invalid." See Morgan, 346 U.S. at 509. The First Circuit has indicated that what constitutes a "fundamental error" is not clearly defined, but the standard is a stringent one. See George, 676 F.3d at 258. Indeed, the remedy of coram nobis "lies at the far end of [the] continuum" of remedies,

encompassing "stiffer" requirements than do successive 28 U.S.C. §2255 motions. Id.

The First Circuit has noted that:

> [T]he tripartite test should not be administered mechanically but, rather, in a flexible, common-sense manner. Even if the test is satisfied, the court retains discretion over the ultimate decision to grant or deny the writ. In other words, passing the tripartite test is a necessary, but not a sufficient, condition for the issuance of the writ.

Id. at 255. "When all is said and done, issuing or denying a writ of error coram nobis must hinge on what is most compatible with the interests of justice." Id. at 258; see also Morgan, 346 U.S. at 511.

In addition, because Medina filed the Petition pro se, the Petition must be "liberally construed . . . [and] held to less stringent standards than formal pleadings drafted by lawyers." Erickson v. Pardus, 551 U.S. 89, 94 (2007) (quoting Estelle v. Gamble, 429 U.S. 97, 106 (1976)).

IV. ANALYSIS

The court has liberally construed the Petition in assessing Medina's claims for relief. It finds that Medina has neither satisfied the three-prong test for relief nor shown that the interests of justice would be served by granting the Petition.

A. Failure to Seek Relief Earlier

While there is no statute of limitations for filing a writ of coram nobis, the one-year statute of limitations applicable to habeas corpus petitions seeking to vacate a sentence under 28 U.S.C. §2255 provides a "serviceable benchmark for what is reasonable." See United States v. Woodward, No. CIV.A. 12-11431-DPW, 2012 WL 4856055, at *4 (D. Mass. Oct. 10, 2012). Section 2255(f)(3), which sets forth the timing requirements for petitions under 28 U.S.C. §2255, indicates that no more than one year from the announcement of a new rule in a Supreme Court decision is needed for a reasonably diligent petitioner to seek relief based on that new rule. 28 U.S.C. §2255; see id. at *4. In coram nobis cases, courts have deemed untimely petitions filed more than one year after the announcement of an allegedly new rule. See, e.g., Woodward, 2012 WL 4856055, at *4 (holding that Woodward did not meet the timeliness test because he submitted his coram nobis petition challenging his conviction based on the Supreme Court decision Skilling v. United States, 130 S.Ct. 2896 (2010), more than 20 months after the decision was rendered); United States v. Njai, 312 F. App'x 953, 954 (9th Cir. 2009) (denying coram nobis filed in August 2006 when the decision upon which relief was requested was issued in April 2004).

The Supreme Court decided Loughrin on June 23, 2014. Medina claims to have discovered Loughrin at some unspecified date in

district judge told the jury that it could convict on count I if

Moreover, Medina has not met his burden of demonstrating that granting the Petition "w[ould] eliminate the claimed collateral

it found either a scheme to defraud or a scheme to obtain property by means of false or fraudulent representations." See Puerta, 38 F.3d at 39 (emphasis added); see also id. at 40 ("The government argues that the district court in this case charged the jury that it could find a scheme to defraud "or" a scheme to obtain monies by means of false representations."). Therefore, it appears that the jury was instructed as Medina claims was required. In any event, Medina has not demonstrated that it was not.

Moreover, even if the "by means of" instruction had not been given, the ends of justice would not be served by vacating Medina's conviction. See George, 676 F.3d at 255. The scheme of which Medina was convicted is the type of scheme the Supreme Court in Loughrin stated was "clearly" "by means of" a false statement. See 573 U.S. at 363. The Supreme Court explained that the "by means of" language in §1344(2) "is satisfied when . . . the defendant's false statement is the mechanism naturally inducing a bank . . . to part with the money in its control," which "occurs, most clearly, when a defendant makes a representation to the bank itself—say, when he attempts to cash, at the teller's window, a forged or altered check." See id. Here, Medina's misrepresentations constituted the "mechanism" that "naturally induc[ed]" the Bank of Boston to part with its money. Id. In particular, by writing on the deposit slip filed with the Bank of Boston that the Banco Central check was for $365,000, while -- as the jury found -- knowing it was not, Medina

induced the Bank of Boston to be unlawfully dispossessed of that amount. See Puerta, 38 F.3d at 39-40, 42.[2] When Medina knowingly submitted deposit slips for the incorrect amount, he, in essence, "attempt[ed] to cash . . . a forged or altered check" -- a "clear" case where the "means" requirement is satisfied. Loughrin, 573 U.S. at 363.

Similarly, Medina has failed to demonstrate any error concerning his indictment. The indictment charging Medina with bank fraud included the required "by means of" language. More specifically, the indictment alleged that Medina knowingly attempted "to obtain moneys under the custody and control of such a financial institution by means of false and fraudulent pretenses, representa[t]ions and promises." See Petition (Docket No. 1) at 11 (citing Indictment) (emphasis added). Therefore, Medina has failed to demonstrate any deficiency in his indictment that rendered the district court proceedings "irregular and invalid." See Morgan, 346 U.S. at 509.

Accordingly, Medina has failed to satisfy the third, necessary prong of the three-part test.

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[2] As the First Circuit also explained, "[t]he evidence [at trial] showed the Bank of Boston . . . was induced by Medina's misrepresentations to pay out a large sum to Medina," and Medina "did defraud the bank representatives with whom he dealt; and money was credited to his account and transferred out of the bank because of their belief in his statements, and not on some independent basis." See Puerta, 38 F.3d at 40, 42.

D. Medina's Other Requested Relief

As indicated earlier, on June 24, 2016, this court held that it would construe the Petition only as presenting a petition for writ of coram nobis. See Docket No. 8. The court explained that Medina could not seek habeas corpus relief because he had completed his criminal sentence and, therefore, the "in custody" requirement of 28 U.S.C. §2241(c) and §2254 was not met. See id.

Medina's request for issuance of a writ of audita querela is also being denied. The First Circuit has indicated with respect to the writs of coram nobis and audita querela that "there is no material difference between the two ancient writs." See Trenkler v. United States, 536 F.3d 85, 90, n.2 (1st Cir. 2008); see also United States v. Iacaboni, 592 F. Supp. 2d 216, 221-22 (D. Mass. 2009) ("The general availability of a writ of error audita querela is unclear. The writ has been abolished in the civil context, and the First Circuit has declined explicitly to affirm its availability in the criminal context. Though the criteria to be satisfied in order to invoke this common law tool are not well established, it seems they would be at least as stringent as those identified for a writ of error coram nobis.") (internal citation omitted); United States v. Cabezas, 935 F. Supp. 2d 386, 389 (D. Mass. 2013) (dismissing request for writ of coram nobis or audita querela brought under Padilla v. Kentucky, 559 U.S. 356 (2010),

without distinguishing between the standards applicable to each form of relief).

V. ORDER

In view of the foregoing, it is hereby ORDERED that Medina's Petition and Motion for a Writ of Coram Nobis, and Request for Appointment of Counsel and Further Briefing; Request for Judicial Notice (Docket No. 1) is DENIED.

UNITED STATES DISTRICT JUDGE

United States Court of Appeals
For the First Circuit

No. 19-2179

ANTONIO MEDINA PUERTA,

Petitioner - Appellant,

v.

UNITED STATES,

Respondent - Appellee.

Before

Howard, Chief Judge,
Selya, Lynch, Thompson,
Kayatta and Barron, Circuit Judges.

ORDER OF COURT

Entered: April 28, 2021

Pursuant to First Circuit Internal Operating Procedure X(C), the petition for rehearing en banc has also been treated as a petition for rehearing before the original panel. The petition for rehearing having been denied by the panel of judges who decided the case and the petition for rehearing en banc having been submitted to the active judges of this court and a majority of the judges not having voted that the case be heard en banc, it is ordered that the petition for rehearing and petition for rehearing en banc be denied.

By the Court:

Maria R. Hamilton, Clerk

cc:
Antonio Medina Puerta
Lori J. Holik
Donald Campbell Lockhart
Evan J. Gotlob

APPENDIX 3